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भारत का राजपत्र
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सं. 19] नई दिल्ली, मई 7—मई 13, 2023, शनिवार/ वैशाख 17,— वैशाख 23, 1945
No. 19] NEW DELHI, MAY 7—MAY 13, 2023, SATURDAY/ VAISAKHA 17,— VAISAKHA 23, 1945

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

वित्त मंत्रालय

(राजस्व विभाग)

(केंद्रीय अप्रत्यक्ष कर और सीमा शुल्क बोर्ड)

नई दिल्ली, 25 अप्रैल, 2023

का.आ. 719.—जबकि केंद्रीय सरकार का यह मत है कि श्री शशिकांत, उपायुक्त से संबंधित विभागीय जांच के प्रयोजन से, यह आवश्यक है कि (1) श्री नितिन गुप्ता (2) हितेंद्र मोहन (3) श्री विपिन कुमार यादव (4) श्री विवेक कुमार जैन (5) श्री अजय कुमार पांडे को साक्षी के तौर पर समन किया जाए।

इसलिए अब, विभागीय जांच (साक्षी की उपस्थिति तथा दस्तावेजों की प्रस्तुति का प्रवर्तन) अधिनियम, 1972 (1972 का 18) की धारा 4 की उप- धारा (1) द्वारा प्रदत्त शक्ति का प्रयोग करते हुए, केंद्रीय सरकार, एतद्वारा श्री बिजू थॉमस, अपर निदेशक (आईआरएस, कार्मिक कोड : 3834) को साक्षियों, नामत: (1) श्री नितिन गुप्ता (2) हितेंद्र मोहन (3) श्री विपिन कुमार यादव (4) श्री विवेक कुमार जैन (5) श्री अजय कुमार पांडे के संबंध में, अधिनियम की धारा 5 में विनिर्दिष्ट शक्ति का प्रयोग करने के लिए जांच प्राधिकारी के तौर पर प्राधिकृत करती है।

[फा. सं. सी. 14011/23/2018-एडी.V]

मनीष कुमार सहाय, उप सचिव

MINISTRY OF FINANCE

(Department Of Revenue)

(CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS)

New Delhi, the 25th April, 2023

S.O. 719.—WHEREAS the Central Government is of the opinion that for the purpose of departmental inquiry relating to Shri Shashi Kant, Deputy Commissioner, it is necessary to summon as witnesses namely (1) Shri Nitin Gupta, (2) Shri Hitendra Mohan, (3) Shri Vipin Kumar Yadav, (4) Shri Vivek Kumar Jain and (5) Shri Ajay Kumar Pandey.

NOW THEREFORE, in exercise of the power conferred by sub-section (l) of Section 4 of the Departmental Inquiries (Enforcement of Attendance of Witnesses and Production of Documents) Act, 1972 (18 of 1972), the Central Government hereby authorises Shri Biju Thomas, Additional Director (IRS, Emp code:3834) as the inquiring authority to exercise the power specified in the section 5 of the Act in relation to witnesses namely (1) Shri Nitin Gupta, (2) Shri Hitendra Mohan, (3) Shri Vipin Kumar Yadav, (4) Shri Vivek Kumar Jain and (5) Shri Ajay Kumar Pandey.

[F. No. C. 14011/23/2018-Ad.V]

MANISH KUMAR SAHAY, Dy. Secy.

वित्तीय सेवाएं विभाग

नई दिल्ली, 8 मई, 2023

का.आ. 720.—भारतीय स्टेट बैंक अधिनियम, 1955 (1955 का 23) की धारा 19 के खंड (घ) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, सुश्री स्वाति गुप्ता (जन्म तिथि: 4.8.1971) को अधिसूचना की तारीख से तीन वर्ष की अवधि के लिए अथवा अगले आदेशों तक, जो भी पहले हो, भारतीय स्टेट बैंक के निदेशक मंडल में अंशकालिक गैर-सरकारी निदेशक के पद पर नामित करती है ।

[ईफा. सं. 6/8/2022-बीओ-I]

विजय शंकर तिवारी, अवर सचिव

DEPARTMENT OF FINANCIAL SERVICES

New Delhi, the 8th May, 2023

S.O. 720.—In exercise of the powers conferred by clause (d) of section 19 of the State Bank of India Act, 1955 (23 of 1955), the Central Government, hereby nominates Ms Swati Gupta (DoB: 4.8.1971) as part-time non-official Director on the Board of Directors of State Bank of India, for a period of three years, with effect from the date of notification, or until further orders, whichever is earlier.

[eF. No. 6/8/2022-BO.I]

VIJAY SHANKAR TIWARI, Under Secy.

नई दिल्ली, 8 मई, 2023

का.आ. 721.—राष्ट्रीयकृत बैंक (प्रबंध और प्रकीर्ण उपबंध) स्कीम, 1970 के खंड (3) के उप-खंड (1) के साथ पठित बैंककारी कंपनी (उपक्रमों का अर्जन और अंतरण) अधिनियम, 1970 (1970 का 5) की धारा 9 की उप-धारा (3) के खंड (ज) और उप-धारा (3क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, श्री सुभाष शंकर मलिक (जन्म तिथिः 3.6.1968) को अधिसूचना की तारीख से तीन वर्ष की अवधि के लिए अथवा अगले आदेशों तक, जो भी पहले हो, यूको बैंक के निदेशक मंडल में अंशकालिक गैर-सरकारी निदेशक के पद पर नामित करती है।

[ईफा. सं. 6/8/2022-बीओ-I]

विजय शंकर तिवारी, अवर सचिव

New Delhi, the 8th May, 2023

S.O. 721.—In exercise of the powers conferred by clause (h) of sub-section (3) and sub-section (3A) of section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970) read with sub-clause (1) of clause (3) of the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970, the Central Government hereby nominates Shri Subhash Shankar Malik (DoB: 3.6.1968) as part-time non-official director on the Board of Directors of UCO Bank, for a period of three years from the date of notification, or until further orders, whichever is earlier.

[eF. No. 6/8/2022-BO.I]

VIJAY SHANKAR TIWARI, Under Secy.

नई दिल्ली, 8 मई, 2023

का.आ. 722.—राष्ट्रीयकृत बैंक (प्रबंध और प्रकीर्ण उपबंध) स्कीम, 1970 के खंड (9) के उप-खंड (2) के साथ पठित बैंककारी कंपनी (उपक्रमों का अर्जन और अंतरण) अधिनियम, 1970 (1970 का 5) की धारा 9 की उप-धारा (3) के खंड (छ) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, श्री प्रियवर्त शर्मा (जन्म तिथिः 25.11.1970) को अधिसूचना की तारीख से तीन वर्ष की अवधि के लिए अथवा अगले आदेशों तक, जो भी पहले हो, सेन्ट्रल बैंक आफ इंडिया के निदेशक मंडल में सनदी लेखाकार श्रेणी के अंतर्गत अंशकालिक गैर-सरकारी निदेशक के पद पर नामित करती है।

[ईफा. सं. 6/8/2022-बीओ-I]

विजय शंकर तिवारी, अवर सचिव

New Delhi, the 8th May, 2023

S.O. 722.—In exercise of the powers conferred by clause (g) of sub-section (3) of Section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970) read with item (b) of sub-clause (2) of clause (9) of the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970, the Central Government, hereby nominates Shri Priavrat Sharma (DoB: 25.11.1970) as part-time non-official director under Chartered Accountant category on the Board of Directors of Central Bank of India for a period of three years, from the date of notification or until further orders, whichever is earlier.

[eF. No. 6/8/2022-BO.I]

VIJAY SHANKAR TIWARI, Under Secy.

विदेश मंत्रालय

(सी.पी.वी. प्रभाग)

नई दिल्ली, 22 मार्च, 2023

का.आ. 723.—राजनयिक और कोंसुलीय अधिकारी (शपथ एवं फीस) के अधिनियम, 1948 की धारा 2 के खंड (क) के अनुसरण में वैधानिक आदेश।

एतद्वारा, केंद्र सरकार, मार्च 22, 2023 से कांसुलर सेवाएं के निर्वहन करने के लिए विदेश में भारतीय मिशनों/पोस्टों में सहायक कांसुलर अधिकारियों के रूप में इस मंत्रालय के नीचे उल्लिखित अधिकारियों की नियुक्ति करता है:

क्रम सं.	अधिकारी का नाम और पद (श्री/सर्व)	मिशन / पोस्ट जिसमें सहायक कांसुलर अधिकारी के रूप में नियुक्त किया गया है
१	कनिष्क, सहायक अनुभाग अधिकारी	भारत के दूतावास, कुवैत
२	अनुपम खरे, सहायक अनुभाग अधिकारी	भारतीय उच्चायोग, सुवा

[फा. सं. टी. 4330/01/2023(10)]

एस. आर. एच. फहमी, निदेशक (कांसुलर)

MINISTRY OF EXTERNAL AFFAIRS

(CPV DIVISION)

New Delhi, the 22nd March, 2023

S.O. 723.—Statutory Order in pursuance of clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and fees) Act, 1948 (41 of 1048), the Central Government hereby appoints the below mentioned officials of this Ministry, as Assistant Consular Officers in Indian Missions/Posts abroad to perform Consular services with effect from March 22, 2023:

S. No.	Name & Rank of the Officer (S/Shri)	Mission/Post wherein appointed as Assistanct Consular Officer
1	Kanishka, Assistant Section Officer	Embassy of India, Kuwait
2	Anupam Khare, Assistant Section Officer	High Commission of India, Suva

[F. No. T. 4330/01/2023(10)]

S. R. H FAHMI, Director (Consular)

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 25 नवम्बर, 2022

का.आ. 724.—केन्द्र सरकार, एतदद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 की 25) की धारा 5 की उपधारा (1) सपठित धारा 6 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए राजस्थान राज्य सरकार, अधिसूचना सं. एफ.19(28)गृह-5/2022 दिनांक 23.02.2022, गृह (जीआर.वी) विभाग, जयपुर के माध्यम से जारी सहमति से, श्री उमेश सिन्हा, सहायक पर्यवेक्षक एवं श्री एस. एल. साहू, उप महालेखाकार (प्रशा. एवं सतर्कता अनुभाग), दोनों महालेखाकार (लेखा एवं हकदारी) का कार्यालय, राजस्थान, दोनों जयपुर में तैनात हैं तथा अन्य अज्ञात के खिलाफ दिनांक 11.02.2022 की शिकायत के संबंध में भ्रष्टाचार निवारण अधिनियम, 1988 (1988 की 49) की धारा 7 और 7ए के साथ पठित भारतीय दंड संहिता (1860 की 45) की धारा 120बी, जिसके आधार पर 28.02.2022 को एक सीबीआई मामला आरसी जेएआई 2022 ए 0002 दर्ज किया गया है, के अंतर्गत दंडनीय अपराध(धों) के अन्वेषण करने तथा ऐसे अपराध(धों) से जुड़े या उससे संबद्ध किसी दुष्प्रयास, दुष्प्रेरणा और/अथवा षड्यंत्र एवं/अथवा उसी संव्यवहार में किए गए या उन्हीं तथ्यों से उत्पन्न किसी अन्य अपराध का अन्वेषण करने के लिए, दिल्ली विशेष पुलिस स्थापना (28.02.2022 के प्रभाव से कार्योत्तर) के सदस्यों की शक्तियों और क्षेत्राधिकार का विस्तार समस्त राजस्थान राज्य में करती है।

[फा. सं. 228/119/2022-एवीडी-II]

संजय कुमार चौरसिया, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS

(Department of Personnel And Training)

New Delhi, the 25th November, 2022

S.O. 724.—In exercise of the powers conferred by sub-section (1) of section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (25 of 1946), the Central Government with the consent of the State Government of Rajasthan, issued vide Notification No.F.19(28)Home-5/2022 dated 23.02.2022, Home (Gr.V) Department, Jaipur, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment (ex post facto w.e.f. 28.02.2022) to the whole State of Rajasthan for investigation into the offence(s) arising out of the complaint dated 11.02.2022 against Shri Umesh Sinha, Assistant Supervisor and

Shri S.L. Sahu, Deputy Accountant General (Admin. & Vigilance Section), both posted in the O/o Accountant General (A&E), Rajasthan, Jaipur and unknown others punishable under section 120B of the Indian Penal Code (45 of 1860) r/w sections 7 and 7A of the Prevention of Corruption Act, 1988 (49 of 1988) based on which a CBI case RC JAI 2022 A 0002 has been registered on 28.02.2022 and any attempt, abetment and/or conspiracy, in relation to or in connection with such offence(s) and/or for any other offence committed in the course of the same transaction or arising out of the same facts.

[F. No. 228/119/2022-AVD-II]

SANJAY KUMAR CHAURASIA,Under Secy.

नई दिल्ली, 19 दिसम्बर, 2022

का.आ. 725.—केन्द्र सरकार एतदद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का 25) की धारा 5 की उपधारा (1) सपठित धारा 6 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए महाराष्ट्र सरकार, गृह विभाग, मुंबई के आदेश सं.- सीबीआई 1621/सी.आर.-752/पीओएल–2, दिनांक 16.12.2021 के माध्यम से जारी सम्मति से, लेफ्टिनेंट कर्नल विकास राइज़दा, एडीओएस, आर्मी आयुध वाहिनी, दक्षिण कमांड, पुणे, श्री सुशान्त नाहक, हवलदार, श्रीमती प्रियंका पत्नी श्री आलोक कुमार, श्री आलोक कुमार, सिपाही एवं अन्य अज्ञात व्यक्तियों के विरूद्ध वर्ष 2020-21 में विभिन्न ट्रेडों के लिए आयोजित भर्ती परीक्षा की उत्तर कुंजी उपलब्ध कराने के संबंध में भा. दं. संहिता की धारा 120(बी) सपठित भ्रष्टाचार निवारण अधिनियम, 1988 (1988 का 49) (2018 के अधिनियम 16 द्वारा यथा संशोधित) की धारा 7 के तहत दिनांक 18.12.2021 को दर्ज सीबीआई मामला आरसी 12220 21ए0005/सीबीआई /एसीबी/पुणे, से संबंधित अपराध(धों) या उससे संबद्ध किसी दुष्प्रयास, दुष्प्रेरणा और/अथवा षड्यंत्र एवं/अथवा उसी संव्यवहार में किए गए या उन्ही तथ्यों से उत्पन्न किसी अन्य अपराध का अन्वेषण करने के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का विस्तार (कार्योत्तर प्रभाव से दिनांक 18.12.2021 से) समस्त महाराष्ट्र राज्य में करती है।

[फा. सं. 228/120/2022-एवीडी-II]

राजीव कुमार खरे, अवर सचिव

New Delhi, the 19th December, 2022

S.O. 725.—In exercise of the powers conferred by sub-section (1) of section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (25 of 1946), the Central Government with the consent of the State Government of Maharashtra, issued vide Order No. CBI 1621/C.R. 752/Pol-2 dated 16.12.2021, Home Department, Mumbai, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment (ex post facto w.e.f. 18.12.2021) to the whole State of Maharashtra for investigation into the offence(s) against Lt. Col. Vikash Raizada, ADOS, Army Ordnance Corps, Southern Command, Pune, Shri Susanta Nahak, Havildar, Smt. Priyanka, w/o Shri Alok Kumar, Shri Alok Kumar, Sepoy and unknown others, pertaining to providing of answer keys during the recruitment process for selection of various Trades through examination held during the year 2020-21, punishable under section 120B of the Indian Penal Code (45 of 1860) r/w section 7 of the Prevention of Corruption Act, 1988 (49 of 1988) (as amended by Act 16 of 2018), relating to CBI Case RC1222021A0005/CBI/ACB/Pune registered on 18.12.2021 and any attempt, abetment and/or conspiracy, in relation to or in connection with such offence(s) and/or for any other offence committed in the course of the same transaction or arising out of the same facts.

[F. No. 228/120/2022-AVD-II]

RAJEEV KUMAR KHARE, Under Secy.

नई दिल्ली, 27 दिसम्बर, 2022

का.आ. 726.—केन्द्र सरकार, एतद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का 25) की धारा 5 की उप-धारा (1) सपठित धारा 6 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उत्तराखंड राज्य सरकार, गृह अनुभाग-4, देहरादून की अधिसूचना सं. 156/XX (4)-2022-13(03)2022, दिनांक 30.09.2022 के माध्यम से जारी सम्मति से, मामला अपराध सं. 13/2018, 13/2022, 15/2022 और 31/2022, जो सभी थाना राजपुर, जिला देहरादून, उत्तराखंड में पंजीकृत हैं, से संबन्धित अपराध(धों) का अन्वेषण करने तथा ऐसे अपराध(धों) से जुड़े या उससे संबद्ध किसी दुष्प्रयास, दुष्प्रेरणा एवं/अथवा षड्यंत्र एवं/अथवा उसी संव्यवहार में किए गए या उन्हीं तथ्यों

से उत्पन्न किसी अन्य अपराध का अन्वेषण करने के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का विस्तार समस्त उत्तराखंड राज्य में करती है।

[फा. सं. 228/117/2022-एवीडी-II]

संजय कुमार चौरसिया, अवर सचिव

New Delhi, the 27th December, 2022

S.O. 726—In exercise of the powers conferred by sub-section (1) of section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (25 of 1946), the Central Government with the consent of the State Government of Uttarakhand, issued vide Notification No. 156/XX (4)-2022-13(03)2022 dated 30.09.2022, Home Section-4, Dehradun, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole State of Uttarakhand for investigation into the offence(s) relating to Case Crime Nos. 13/2018, 13/2022, 15/2022 and 31/2022, all registered at Police Station Rajpur, District Dehradun, Uttarakhand and any attempt, abetment and/or conspiracy, in relation to or in connection with such offence(s) and/or for any other offence committed in the course of the same transaction or arising out of the same facts.

[F. No. 228/117/2022-AVD-II]

SANJAY KUMAR CHAURASIA, Under Secy.

नई दिल्ली, 14 मार्च, 2023

का.आ. 727.—केन्द्र सरकार, एतदद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का 25) की धारा 5 की उपधारा (1) सपठित धारा 6 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए महाराष्ट्र राज्य सरकार, आदेश सं. सीबीआई 1622/सी.आर. 13/पीओएल-2, दिनांक 06.01.2022, गृह विभाग, मुंबई, के माध्यम से जारी सम्मति से, श्री सखाराम खरातमोल, वरिष्ठ अनुभाग अभियंता, इंजनियरिंग विभाग, पंश्चिम रेलवे, चर्चगेट, मुंबई के विरूद्ध श्री सुनील संतु यादव, निवास ए-9, साई नाथ नगर, मदोना कॉलोनी, भगवती हॉस्पिटल के पीछे, बोरावली पश्चिम, मुंबई द्वारा दिनांक 03.01.2022 को भ्रष्टाचार निवारण अधिनियम, 1988(1988 का 49) (2018 का अधिनियम 16 में यथासंशोधित) की धारा अधिनियम 7 के तहत दर्ज कराई गई शिकायत, जिसके आधार पर दिनांक 07.01.2022 को सीबीआई मामला, आरसी 0262022ए0001 दर्ज की गई है, से उत्पन्न अपराध(धों) का अन्वेषण तथा ऐसे अपराध(धों) से जुड़े या उससे संबद्ध किसी दुष्प्रयास, दुष्प्रेरणा और/अथवा षड्यंत्र एवं/अथवा उसी संव्यवहार में किए गए या उन्हीं तथ्यों से उत्पन्न किसी अन्य अपराध काअन्वेषण करने के लिए दिल्ली विशेष पुलिस स्थापना (07.01.2022 के प्रभाव से कार्योतर) के सदस्यों की शक्तियों और क्षेत्राधिकार का विस्तार समस्त महाराष्ट्र राज्य में करती है।

[फा. सं. 228/121/2022-एवीडी-II]

संजय कुमार चौरसिया, अवर सचिव

New Delhi, the 14th March, 2023

S.O. 727.—In exercise of the powers conferred by sub-section (1) of section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (25 of 1946), the Central Government with the consent of the State Government of Maharashtra, issued vide Order No.CBI 1622/C.R. 13/Pol-2 dated 06.01.2022, Home Department, Mumbai, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment (ex post facto w.e.f. 07.01.2022) to the whole State of Maharashtra for investigation into the offence(s) arising out of the complaint dated 03.01.2022 lodged by Shri Sunil Santu Yadav, R/o A-9, Sai Nath Nagar, Madona Colony, Behind Bhagwati Hospital, Boriwali West, Mumbai against Shri Sakharam Kharatmol, Senior Section Engineer, Engineering Department, Western Railway, Churchgate, Mumbai, punishable under section 7 of the Prevention of Corruption Act, 1988 (49 of 1988) (as amended by Act 16 of 2018), based on which a CBI Case RC0262022A0001 has been registered on 07.01.2022 and any attempt, abetment and/or conspiracy, in relation to or in connection with such offence(s) and/or for any other offence committed in the course of the same transaction or arising out of the same facts.

[F. No. 228/121/2022-AVD-II]

SANJAY KUMAR CHAURASIA, Under Secy.

नई दिल्ली, 1 मई, 2023

का.आ. 728.—केन्द्र सरकार, एतदद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का 25) की धारा 5 की उप-धारा (1) सपठित धारा 6 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए कर्नाटक राज्य सरकार, गृह विभाग (अपराध), कर्नाटक सरकार सचिवालय, बंगलुरु की अधिसूचना सं. एचडी 70 सीओडी 2022 दिनांक 21.01.2023 के माध्यम से जारी सम्मति से, कथित तौर पर श्री प्रवीन एस कोप्पड (पुरुष), पुत्र श्री सुशीला डी नाइक, निवासी ब्लॉक सं. 1, 7, काकाती पुलिस क्वार्टर्स, बेलगाँव, कर्नाटक एवं अन्यों द्वारा नाबालिगों के शारीरिक यौन शोषण को चित्रित करती हुई बाल यौन शोषण सामग्री का निर्माण, संकलन एवं प्रसारण करने के संबंध में सूचना प्रौद्योगिकी अधिनियम, 2000 (2000 का 21) की धारा 67बी के अंतर्गत किए गए अपराध(धों) का अन्वेषण तथा ऐसे अपराध(धों) से जुड़े या उससे संबद्ध किसी दुष्प्रयास, दुष्प्रेरणा और/अथवा षड्यंत्र एवं/अथवा उसी संव्यवहार में किए गए या उन्हीं तथ्यों से उत्पन्न किसी अन्य अपराध का अन्वेषण करने के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का विस्तार समस्त कर्नाटक राज्य में करती है।

[फा. सं. 228/13/2023-एवीडी-II]

संजय कुमार चौरसिया, अवर सचिव

New Delhi, the 1st May, 2023

S.O. 728.—In exercise of the powers conferred by sub-section (1) of section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (25 of 1946), the Central Government with the consent of the State Government of Karnataka issued vide Notification No. HD 70 COD 2022 dated 21.01.2023, Home Department (Crimes), Karnataka Government Secretariat, Bengaluru, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole State of Karnataka for investigation into the offence(s) under section 67B of the Information Technology Act, 2000 (21 of 2000) alleged to have been committed by Shri Praveen S Koppad (Male), S/o Shri Susheela D Naik, R/o Block No. 1, 7, Kakati Police Quarters, Belgaum, Karnataka and others pertaining to creation, collection and circulation of Child Sexual Abuse Material, depicting the physical sexual abuse of the minor persons and any attempt, abetment and/or conspiracy, in relation to or in connection with such offence(s) and/or for any other offence committed in the course of the same transaction or arising out of the same facts.

[F. No. 228/13/2023-AVD-II]

SANJAY KUMAR CHAURASIA, Under Secy.

नई दिल्ली, 1 मई, 2023

का.आ. 729.—केन्द्र सरकार, एतदद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का 25) की धारा 5 की उप-धारा (1) सपठित धारा 6 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए पश्चिम बंगाल राज्य सरकार, गृह एवं पहाड़ी मामले विभाग, नबन्ना के पत्र सं. 385-आई.एस.एस./2एम-169/14 (पार्ट1), दिनांक 17.04.2023 के माध्यम से जारी सम्मति से श्री पवन कुमार, सीमा शुल्क अधीक्षक, बामर लॉरी सीएफएस, खिदिरपुर, कोलकाता के विरुद्ध भ्रष्टाचार निवारण अधिनियम, 1988 (1988 का 49) (2018 के अधिनियम 16 द्वारा यथासंशोधित) की धारा 7 के तहत दण्डनीय अपराध(धों) के संबंध में श्री राज कुमार मुंद्रा, निवासी 22/2, कर्मचारी, मनोहर पाकुड़ रोड, कोलकाता, मेसर्स एचडीएम आईएमपीईएक्स, बड़ाबाजार एरिया, कोलकाता-1 द्वारा दिनांक 10.04.2023 को दर्ज करायी गई शिकायत, जिसके आधार पर दिनांक 17.04.2023 को एक सीबीआई मामला आरसी0102023ए0003 दर्ज किया गया है, से उत्पन्न अपराध(धों) का अन्वेषण करने के लिए तथा ऐसे अपराध(धों) से जुड़े या उससे संबद्ध किसी दुष्प्रयास, दुष्प्रेरणा एवं/अथवा षड्यंत्र एवं/अथवा उसी संव्यवहार में किए गए या उन्हीं तथ्यों से उत्पन्न किसी अन्य अपराध का अन्वेषण करने के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का विस्तार (कार्योत्तर प्रभाव से दिनांक 17.04.2023 से) समस्त पश्चिम बंगाल राज्यं में करती है।

[फा. सं. 228/20/2023-एवीडी-II]

संजय कुमार चौरसिया, अवर सचिव

New Delhi, the 1st May, 2023

S.O. 729.—In exercise of the powers conferred by sub-section (1) of section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (25 of 1946), the Central Government with the consent of the State Government of West Bengal, issued vide letter No. 385-I.S.S/2M-169/14(Pt.1) dated 17.04.2023, Home & Hill Affairs Department, Nabanna, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment (ex post facto w.e.f. 17.04.2023) to the whole State of West Bengal for investigation into the offence(s) arising out of the complaint dated 10.04.2023 lodged by Shri Raj Kumar Mundra, R/o 22/2, Manohar Pukur Road, Kolkata, Employee of M/s HDM IMPEX, Barabazar Area, Kolkata-1 against Shri Pawan Kumar, Superintendent of Customs, Balmer Lawrie CFS, Khidirpur, Kolkata under section 7 of the Prevention of Corruption Act, 1988 (49 of 1988) (as amended by Act 16 of 2018), based on which a CBI case RC0102023A0003 has been registered on 17.04.2023 and any attempt, abetment and/or conspiracy, in relation to or in connection with such offence(s) and/or for any other offence committed in the course of the same transaction or arising out of the same facts.

[F. No. 228/20/2023-AVD-II]

SANJAY KUMAR CHAURASIA, Under Secy.

नई दिल्ली, 4 मई, 2023

का.आ. 730.—केंद्र सरकार, राजभाषा [संघ के शासकीय प्रयोजनों के लिए प्रयोग] नियमावली, 1976 (यथा संशोधित 1987,2007 और 2011) के नियम 10 के उप-नियम (4) के अनुसरण में कार्मिक और प्रशिक्षण विभाग के अधीनस्थ कार्यालय केंद्रीय अन्वेषण ब्यूरो के अधीन निम्नलिखित कार्यालयों, जिसके 80 प्रतिशत से अधिक कर्मचारियों ने हिंदी भाषा का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती हैः-

1. आर्थिक अपराध शाखा, मुम्बई
2. विशेष कार्य शाखा, मुम्बई
3. विशेष एकक, मुम्बई

[फा. सं. ई.-11017/1/2022-हिंदी]

एस. डी. शर्मा, संयुक्त सचिव

New Delhi, the 4th May, 2023

S.O. 730.—Central Government in pursuance of Sub-Rule (4) of Rule 10 of official languages [Use for official purpose of union] Rules, 1976 (as amended in 1987,2007and 2011) hereby notifies the following offices under the Central Bureau of Investigation, a subordinate office of Department of Personnel and Training whose more than 80 percent staff has acquired working knowledge of Hindi language:

1. Economic Offences Branch, Mumbai
2. Special Task Branch, Mumbai
3. Special Unit, Mumbai

[F. No. E-11017/1/2022-Hindi]

S.D. SHARMA, Jt. Secy.

उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्रालय

(खाद्य और सार्वजनिक वितरण विभाग)

नई दिल्ली, 18 अप्रैल, 2023

का.आ. 731.— केन्द्रीय सरकार राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप नियम (4) के अनुसरण में उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्रालय (खाद्य और सार्वजनिक वितरण विभाग) के प्रशासनिक नियंत्रणाधीन निम्नलिखित कार्यालय, जिसके 80 प्रतिशत से अधिक कर्मचारीवृन्द ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को राजपत्र में अधिसूचित करती है:-

1. : केन्द्रीय भंडारगृह, कोटा-1,
राजस्थान

[फा. सं. ई-11011/1/2008-हिन्दी (321924)]

राजेन्द्र कुमार, संयुक्त सचिव

MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION

(Department Of Food And Public Distribution)

New Delhi, the 18th April, 2023

S.O. 731.—In pursuance of sub-rule (4) of Rule 10 of the Official Language (use for official purpose of the Union) Rules, 1976, the Central Government hereby notifies the following office under the administrative control of the Ministry of Consumer Affairs, Food & Public Distribution (Department of Food & Public Distribution), whereof more than 80% of staff have acquired the working knowledge of Hindi:

1. : Central Warehouse, Kota-1,
Rajasthan.

[F. No. E-11011/1/2008-Hindi (321924)]

RAJENDER KUMAR, Jt. Secy.

श्रम और रोजगार मंत्रालय

नई दिल्ली, 5 अप्रैल, 2023

का.आ. 732.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार युको बैंक प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 1 धनबाद के पंचाट संदर्भ स.ा (09/2018) को प्रकाशित करती है।

[सं. एल- 12012/06/2018-आई आर (बी-II)]

सलोनी, उप निदेशक

MINISTRY OF LABOUR AND EMPLOYEMENT

New Delhi, the 5th April, 2023

S.O. 732.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 09/2018) of the Cent.Govt.Indus.Tribunal-cum-Labour Court No.1 Dhanbad as shown in the Annexure, in the industrial dispute between the management of UCO Bank and their workmen.

[No. L-12012/06/2018 -IR(B-II)]

SALONI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D. Act. 1947.

Reference: No. 09/2018

Employer in relation to the management of UCO Bank,Thakurgaon Branch, Ranchi.

AND.

Their workman.

Present: Shri DINESH KUMAR SINGH, Presiding Officer

Appearances:

For Employer :- Sri S.N. Ghosh, Advocate.
For workman :- Sri D. Mukherjee, Advocate.
State : Jharkhand. Industry:- Bank
Dated 29/09 /2022

AWARD

By Order No. L-12012/06/2018- (IR(B-II)) dated 25.04.2018, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub –section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

"Whether the action of the management of UCO Bank, Thakurgaon Branch, Ranchi by terminating Sri Ashis kumar, Daily Wages Worker (Peon) alleged to be working from 14/12/2012 to 04/07/2015 without any prior notice and engagement of other person in his place is justified, if not, what relief the workmen Sri Ashis Kumar is entitled to?"

2. After receipt of the reference, both the parties were noticed. The concerned workman has filed his written statement of claim on 07/06/2018 and the management of UCO Bank, Thakurgaon Branch, Ranchi has filed its written statement cum rejoinder on 26/03/2019.

The concerned workman namely Ashish Kumar has filed rejoinder to the written statement of the management on 13/05/2019.

3. The claim of the concerned workman as per his written statement is as follows:-

That he was originally engaged/appointed in Thakur Gaon Branch as Peon against permanent vacancy, as per order of the then Head Branch Manager and subsequently he started working as a peon but the management was paying him wages of coolie (Labour). He was performing job of regular nature and he used to help the customers making entry into the register, opening of new accounts and other miscellaneous work but the manager did not issue any appointment letter to him. He had worked continuously from 14/12/2012 to 04/07/2015 but his service was terminated by the management of the Bank illegally in violation of the principle of natural justice. He had made representation before the management for his illegal stoppage of work but the anti-labour management did not take any cognizance of this fact. After that he had raised a dispute before the RLC (C), Ranchi and subsequently this reference case.

A prayer has been made for reinstatement in the Bank with full back wages.

4. The case of the management as per its written statement is as follows:-

That the present reference is not maintainable in law or in facts as the concerned employee was neither appointed as employee of the Bank nor his services were terminated as such. The concerned workman was engaged as daily rated worker by the Branch Manager of the Bank for performing miscellaneous jobs available on a day to day basis and he was used to be paid daily rated wages. The concerned workman was never kept on the roll of the Bank in the capacity of an employee and he was never paid salary/wages in accordance with the rules of the Bank. There was no sanctioned post for regularization of the workman. The Branch Manager do engage daily workers for carrying on miscellaneous jobs as and when required and he has got no power to appoint any employee in the Branch. The service of the concerned workman was utilized by the local branch authority as daily wage earner on the basis on particular day as per the requirement of local branch authority. The concerned workman has not made his case for regularisation of his service, so claim of the concerned workman is liable to be dismissed.

A prayer has been made to hold that the workman is not engaged by the Branch and he is not entitled for any relief.

The management by way of rejoinder has mentioned that the statement made in Para 1, 2, 3, 4, 5, 6, 7, 8, 9,10, 11, 12, 13, 14 and 16 of the written statement of workman are untrue, misconceived, malafide and denied and the statement made in Para 15 of the written statement of workman is matter of record.

5. The concerned workman has submitted rejoinder to the written statement of management stating therein that the statement made in Para 2 of the written statement of management it is submitted that the present reference is legally maintainable, the statement made in Para 3, 8 and 9 of the written statement of management are false, illegal and denied, the statement Para 4, 5, 6 and 7 of the written statement of management it is submitted that the concerned workman was engaged/appointed in permanent nature of jobs

and he had been working regularly against the permanent vacancy under the direct control and supervision of the management.

6. The concerned workman has examined only one witness. He is WW-1, Ashish Kumar, the claimant.

7. The concerned workman has proved the following documents which are marked as:-

Exhibit W-1- Original Certificate, dated 29/08/2015 issued by Assistant Manager, UCO Bank mentioning Ashish Kumar worked under him from 31 August 2013 to 04/07/2015 at UCO Bank Thakurgaon and he is hard working and has good knowledge in computer.

Exhibit W-2- Original Certificate issued by Assistant Manager of Thakurgaon mentioning Ashish Kumar had worked in UCO, Bank of Thakurgaon Branch and he is hard working and has good knowledge of computer.

Exhibit W-3- Original Certificate issued by the Branch Manager, Thakurgaon Branch mentioning therein that Ashish Kumar was working in his Branch and he is punctual at his work.

Exhibit W-4- Original Certificate, dated 20/07/2015 issued by Branch Manager, Thakurgaon Branch mentioning therein that Ashish Kumar had worked under him from 07/11/2014 to 04/07/2015 at UCO Bank, Thakurgaon Branch and he has also sound knowledge in computer.

Exhibit W-5- Original Authorisation Letter issued by Manager, UCO Bank, Thakurgaon Branch dated 03/06/2015 to Ashish Kumar for receiving stationery for daily need.

Exhibit W-6- Original Saving Bank Passbook of Ashish Kumar, UCO Bank, Thakurgaon Branch.

8. The management has examined only one witness. He is MW-1, Rajesh Ranjan.

9. The management has not proved any documents in support of its case.

10. The learned lawyer of the workman has submitted that the concerned workman had been working at Thakurgaon Branch as Peon since 14/12/2012 and he was engaged by the Branch Manager of the said Bank. He has further submitted that the workman was working regularly and continuously in different kinds of permanent nature of jobs but the management had terminated is service by stopping him from attending duty w.e.f. 04/07/2015 without assigning any reason which is in violation of the principle of natural justice. He has also submitted that the concerned workman had made representation before the management several times against his legal termination but his case was not considered. He has produced six documents which are marked as Exhibit W-1 to W-6 which show that the concerned workman was engaged by the Branch Manager for performing day to day work. He has submitted that the concerned workman had worked for 240 days in a calendar year. He has also submitted that management had not given any reason or justification for stopping him for attending duty. He has also argued that management has not denied that the concerned workman had not worked for 240 days in a calendar year. He has also argued that the concerned workman had been terminated from service without compliance of the provision of Section 25F of the I.D. Act, so the dismissal of the concerned workman is in violation of the provision of section 25F of the I.D. Act. He has made prayer to reinstate the concerned workman with full back wages.

11. On the other hand the learned lawyer of the management has submitted that the concerned workman was not discharging the work of Peon as the post of Peon is a sanctioned post and no person can be engaged as a peon without following the proper procedure. He has further argued that the Exhibits W-1, W-2, W-3 and W-4 show that the concerned workman had good knowledge of computer and all these documents are fictitious and not reliable. He has also submitted that there are no such documents available in the Branch as mentioned by the concerned workman. He has also submitted that these documents do not show that the concerned workman was working as a peon in the Bank. He has also submitted that the concerned workman was engaged as daily wages for certain days and as per quantum of work his wage was paid. He has also argued that the workman is not entitled for regularisation in the Bank.

12. Now, the only point of determination in this case is whether the concerned workman was working from 14/12/2012 to 04/07/2015 in UCO Bank, Thakurgaon Branch, Ranchi and without any prior notice he was terminated from service and other person was engaged in his place?

FINDINGS

13. At the outset of discussion it is required to mention here that it has been admitted by both the parties that the concerned workman namely Ashish Kumar was engaged on daily basis in Thakurgaon Branch of UCO Bank, Ranchi.

14. Now the question arises whether the concerned workman was working as a peon in the UCO Bank of Thakurgaon Branch, Ranchi and he was terminated from the service by the Bank without giving prior notice and other person was engaged in his place.

15. In this regard the WW-1, who is concerned workman, is the only competent witness on this point. He has deposed that he was working as peon in Thakurgaon Branch of UCO Bank since 14/12/2012 continuously till 04/07/2015 and he had engaged by the Branch Manager of the said Bank. He has also deposed that he had been performing the duty of opening the branch, cleaning the room and booting the computers of the Branch, helping customers in opening their account and other allied works. He has further stated that he was discharging all the duties under the supervision of Branch Manager of UCO Bank and he had received salary through voucher by the bank. He has also stated that he had an account in the said branch and his salary was paid in that account. He has also stated that his wages were paid in his name and in the name of other persons. He has further stated that Bank had issued vouchers in his name and in the name of Santosh Kumar and he had received both the vouchers. He has further stated that the then Branch Manager Dilip Ranjan Lakra of UCO Bank had issued a certificate on 29/07/2015 regarding his work in UCO Bank since 31/07/2013 to 04/07/2015. He has proved a certificate issued by Dilip Ranjan Lakra, Assistant Manager, UCO Bank Thakurgaon Branch which is marked as Exhibit W-1. He has also proved another certificate issued by Branch Manager Dilip Ranjan Lakra which is marked as Exhibit W-2. He has proved another certificate issued by Sri Subodh Tigga, Branch Manager Thakurgaon Branch which is marked as Exhibit W-3. He has proved the certificate issued by Sri Subodh Tigga the then Branch Manager which is marked as Exhibit W-4. He has also proved the authorisation letter issued by Sri Subodh Tigga, Manager, Thakurgaon Branch which is marked as Exhibit W-5. He has proved his pass book of Saving Account No. 27620110005408 which is marked as Exhibit W-6. He has further stated that he had worked for 240 days in a calendar year and no notice had been issued to him for his retrenchment, so he is entitled for reinstatement with back wages.

In the cross-examination he has stated that he had not been given any appointment letter for appointment to the post of peon by the Branch Manager of Thakurgaon Branch. He has also stated that no advertisement was issued by the UCO Bank of Thakurgaon Branch regarding appointment by post of peon in the Bank and he used to discharge of work of cleaning in the Bank. He has also stated that the Branch Manager had not issued any I-card to him. He has further stated the Exhibit W-1, doesn't bear any seal of the Bank. Exhibit W-2, doesn't bear any reference number and date, Exhibit W-3 and W-4 have been signed as for UCO Bank. He has denied the suggestion that he had not worked for 240 days in a calendar year.

16. On the other hand the MW-1, Rajesh Ranjan has deposed that Ashish Kumar was a coolie (worker) and on his demand he was engaged for one hour and two hour in the Bank. He has also stated that his wages were deposited in his saving account of the Bank and he had worked sometimes for 10 days and sometimes for 12 or 14 days. He has further stated that there is no reference in the official record with regard to Exhibit W-1 to Exhibit W-4. He has further stated that the workman was not on the roll of the Bank and he was not given any appointment letter as he had worked as a collie or mazdoor which is not a permanent nature.

In the cross-examination he has deposed that he had not worked in the UCO Bank since 14/12/2012 to 04/07/2015, so he has no personal information in this regard. He has also deposed that there is no post of coolie in any bank and he had not produced any paper to show that concerned workman had worked as a coolie in the Bank. He has also stated that there are signatures of the Branch Manager of Thakurgaon Branch of UCO Bank on Exhibit W-1 to Exhibit W-4. He has also stated that he had no knowledge whether any action had been taken against the then Branch Manager of UCO Bank for engagement of concerned workman. He has denied the suggestion that the concerned workman had worked for 240 days in the Bank.

17. Now coming to the documentary evidence of the concerned workman it appears that W-1 is a certificate issued by Assistant Manager, UCO Bank mentioning therein that Ashish Kumar had worked under him from 31 August 2013 to 04/07/2015 at UCO Bank, Thakurgaon Branch and he had been hard working and had good knowledge of computer. Further the Exhibit W-2 is a certificate issued by the Assistant Manager, UCO Bank, Thakurgaon Branch mentioning therein that Ashish Kumar had worked in UCO Bank of Thakurgaon Branch and he is hard working and good knowledge of computer. Exhibit W-3 is a certificate issued by the Branch Manager, Thakurgaon Branch mentioning therein that Ashish Kumar was working in his Branch and he was punctual at his work. It has been further mentioned that he was also active at mobilisation in recoveries work and he had good knowledge of house keeping. Exhibit W-4 is a Certificate

issued by the Branch Manager, Thakurgaon Branch mentioning therein that Ashish Kumar had worked under him from 07/11/2014 to 04/07/2015 at UCO Bank, Thakurgaon Branch and he was hard working having good moral character. Exhibit W-5 is an authorisation letter to Ashish Kumar for receiving stationery for daily need issued by the Manager, UCO bank, Thakurgaon Branch and Exhibit W-6 is the saving bank passbook of UCO Bank of concerned workman.

18. Now in this case the WW-1 in his evidence has categorically mentioned that he had worked for more than 240 days in a calendar year in the UCO Bank, Thakurgaon Branch, Ranchi. Further the Exhibit W-1 is a certificate issued by Assistant Manager, UCO Bank mentioning therein that the concerned workman had worked from 13 August 2013 to 04/07/2015 and Exhibit W-4 is a certificate issued by the Branch Manager of UCOBank of Thakurgaon Branch mentioning therein that Ashish Kumar had worked under him since 07/11/2014 to 04/07/2015. The MW-1 in his evidence has simply denied that the concerned workman had not worked for 240 days.

After analysing the oral and documentary evidence available in this case, the Tribunal comes to the conclusion that concerned workman had worked for more than 240 days in a calendar year.

19. It is important to mention here that the workman has been defined u/s 2(s) of Industrial Dispute Act. The Section 2(s) of I.D. Act reads as follows:-

"workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a person, or

(iii) who is employed mainly in a managerial or administrative capacity, or

(iv) who, being employed in a supervisory capacity, draws wages exceeding (ten thousand rupees) per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature

20. At this stage it is relevant to mention here that the Hon'ble Supreme Court in a case as reported in 2011 LAB. I. C. 2799 (S.C) has been pleased to observe as follows:-

"14. It is apposite to observe that the definition of workman also does not make any distinction between full-time and part-time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only a person employed on regular basis or a person employed for doing whole-time job is a workman and the one employed on temporary, part-time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman.

15. Whenever an employer challenges the maintainability ground that the employee is not a workman within the meaning of Section 2(s) of the Act, what the Labour Court/Industrial Tribunal is required to consider is whether the person is employed in an industry for hire or reward for doing manual, unskilled, skilled, operational, technical or clerical work in an industry. Once the test of employment for hire or reward for doing the specified type of work is satisfied, the employee would fall within the definition of 'workman".

21. It is required to mention here that the concerned workman namely Ashish Kumar had worked in the UCO Bank, Thakurgaon Branch as a daily wager (Peon), so he was employed in the Bank on hire and consequently he was a workman and there was a relationship between him and the management as employer and employee, so there is Industrial Dispute.

22. It is also relevant to mention here that the word retrenchment has been defined u/S 2(oo) of the I .D .Act, definition of continuous service has been mentioned u/s 25-B of I . D .Act and the condition precedent to retrenchment have been mentioned u/S 25 F of I.D Act.

Section 2(oo) of the I.D.Act reads as follows:-

Section 2(oo) -"retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include-

(a)Voluntary retirement of the workman; or

(b) Retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(bb) Termination of the service of the workman as a result of the non-renewal of contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

(c)Termination of the service of a workman on the ground of continued ill-health.

25-B. Definition of continuous service – For the purpose of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) Where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than –

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

(b)……..

The Section 25-F of the Industrial Dispute Act reads as follows:-

25-F Conditions precedent to retrenchment of workmen- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) The workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

(b) The workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay (for Every completed year of continuous service) or any part thereof in excess of six months; and

(c) Notice in the prescribed manner is served on the appropriate Government (or such authority as may be specified by the appropriate Government by notification in the Official Gazette.)

23. Now in this case there is categorical evidence that the concerned workman had worked in UCO Bank, Thakurgaon Branch, Ranchi for more than 240 days in each and every Calendar Year, so the concerned workman was in continuous service in the Bank as per definition mentioned u/s 25-B of I.D' Act. Moreover there is also evidence that the concerned workman was removed from his service w.e.f. 04/07/2015. Further there is no evidence before the Tribunal that the concerned workman had been given one month notice in writing indicating the reasons for their retrenchment/ removal or had been paid compensation equivalent to 15 days of average pay as per provision of 25-F of the I.D. Act.

24. Hence, in view of above the discussion the Tribunal finds and holds that the concerned workman namely Ashish Kumar had been working in UCO Bank, Thakurgaon Branch, Ranchi on daily wages (Peon) and he had been removed from service w.e.f. 04/07/2015. Further the action of the management in terminating the services of the concerned workman w.e.f. 04/07/2015 is not legal and justified. Hence the concerned workman is entitled for relief.

25. At this stage it is relevant to mention here that the Hon'ble Supreme Court in catena of decision has been pleased to observe that the completion of 240 days work doesn't under the law import the right to regularisation and it merely imposed certain obligation on the employer at the time of termination of service.

The Hon'ble Supreme Court in a case of **Hindustan Aeronautics Ltd Vs. Dan Bahadur Singh, as reported in (2007) 6 SCC 207,** especially in Paragraph No. 18 as under:-

"*18. The next question which requires consideration is whether completion of 240 days in a year confers any right on an employee or workman to claim regularisation in service. In Madhyamik Shiksha Parishad vs.*

Anil Kumar Mishra it was held that the completion of 240 days' work does not confer the right to regularisation under the Industrial Disputes Act. It merely imposes certain obligations on the employer at the time of termination of the services. In M.P. Housing Board vs. Manoj Shrivastava (para 17) after referring to several earlier decisions it has been reiterated that it is well settled that only because a person had been working for more than 240 days, he does not derive any legal right to be regularised in serivee. This view has been reiterated in Gangadhar Pillai vs. Siemens Ltd. The same question has been examined in considerable detail with reference to an employee working in a government company in Indian Drugs & Pharmaceuticals Ltd. vs. Workmen and paras 34 and 35 of the report are being reproduced below: (SCC p.426)

"34. Thus, it is well settled that there is no right vested in any daily wager to seek regularisation. Regularisation can only be done in accordance with the rules and not dehors the rules. In the case of E. Ramakrishnan v. State of Kerala this Court held that there can be no regularisation dehors the rules. The same view was taken in Kishore (Dr.) v. State of Maharashtra and Union of India v. Bishamber Dutt. The direction issued by the services Tribunal for regularising the services of persons who had not been appointed on regular basis in accordance with the rules was set aside although the petitioner had been working regularly for a long time.

35. In Surinder Singh Jamwal (Dr.) v. State of J&K it was held that ad hoc appointment does not give any right for regularization as regularization is governed by the statutory rules.""

The Hon'ble Jharkhand High Court has been pleased to observe in **L.P.A No. 268/2012** which is as under:-

"(xiv) Be that as it may, even assuming without admitting that this appellant has worked more than 240 days in couple of years, then also, his services cannot be regularized. 240 days' working is not a magic bond which converts illegal appointment into the legal appointment. In fact, 240 days working has nothing to do with the regularization at all. 240 days working has got reference under Section 25-B of the Industrial Disputes Act, 1947 for calculation of continuous years of service and nothing beyond that. Unnecessarily several times the Labour Court or the Industrial Courts are committing an error that if any worker has completed 240 days, their services should be regularized. In fact, there is no casual connection at all between the working of 240 days and right of regularization. Illegality in the appointment cannot be diluted by the working of 240 days. Illegality in the appointment continues, even if, the worker has worked for 240 days."

The Hon'ble Jharkhand High Court has been further pleased to hold as follows:-

"Whenever any employment is given unauthorizedly, in the respondent-UCO Bank, Hirapur, Dhanbad, such type of employment cannot be converted into a regular employment unless there are rules for regularization or scheme for regularization. In the facts of the present case, there are no rules of regularization nor there is any scheme of regularization floated by the UCO Bank. In absence of such type of law, the charity shown by the Court will be cruelty to others. If such type regularization is allowed by the Courts, it will provide encouragement to those who are adorning high-ranking administrative position to give illegal appointment and later on, to get them regularized by the orders of the Courts. A thing which cannot be done directly, can never be done indirectly. If no employment can be given without there being any advertisement and without there being any recruitment process, the Court cannot be a party to illegal regularization of such employee."

26. In view of such fact and in view of decision of Hon'ble Supreme Court and Hon'ble Jharkhand High Court it is settled that the workman is not entitled for regularization of their job for working 240 days in a calendar year in, UCO Bank, Thakurgaon Branch, Ranchi.

27. It is relevant to mention here that the Hon'ble Supreme Court in a case of **BSNL Vs. Bhurumal as reported in (2014) 7 SCC 177,** the Hon'ble Supreme Court has been pleased to observe as under:-

34. The Reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal because of non-payment of retrenchment compensation and notice pay as mandatorily required under Section 25-F of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation. Since such a workman was working on daily wage basis and even after he is reinstated, he has no right to seek regularization (See: State of Karnataka vs. Uma Devi (2006) 4 SCC 1). Thus when he cannot claim regularization and he has no right to continue even as a daily wage worker, no useful purpose is going to be served in reinstating such a workman and he can be given monetary compensation by the Court itself inasmuch as if he is terminated again after reinstatement, he would receive monetary compensation only in the form of retrenchment compensation and notice pay. In such a situation, giving the relief of reinstatement, that too after a long gap, would not serve any purpose.

28. The Hon'ble Supreme Court in a case of **District Development Officer Vs. Satish Kantilal Amrelia** as reported in (2018) 12 SCC 29 B has been pleased to hold as follows:-

"***16) In view of forgoing discussion, we are of the considered view that it would be just, proper and reasonable to award lump sum monetary compensation to the respondent in full and final satisfaction of his claim of re-instatement and other consequential benefits by taking recourse to the powers under Section 11-A of the Act and the law laid down by this Court in Bharat Sanchar Nigam Limited case (supra)".***

29. The Hon'ble Supreme Court is an another case Deputy Executive Engineer Vs Kuberbhai Kanjhibhai as reported in 2019 (160) FLR 651 has reiterated the same principle.

30. Now, in this case the concerned workman namely Ashish Kumar had been working as Peon on daily wages (Peon) in the UCO Bank, Thakurgaon Branch, Ranchi since his appointment on different dates and he was removed from the service w.e.f. 04/07/2015 without being given any notice of retrenchment .

31. In view of the decision of Hon'ble Surpeme Court as discussed above it would be proper, just and reasonable to grant lump-sum monetary compensation of three lakhs to the concerned workman.

32. It is required to mention here that the concerned workman has not brought any evidence to show that other persons had been appointed in his place after terminating him from service.

In view of such the Tribunal finds and holds that the management of UCO Bank, Thakurgaon Branch, Ranchi had not engaged any person in place of concerned workman.

33. After considering all the facts and circumstances the Tribunal renderes the following award:-

"The action of Management of UCO Bank, Thakurgaon Branch, Ranchi by terminating the Sri Ashish Kumar, Daily Wages Worker (Peon) working from 14/12/2012 to 04/07/2015 without any prior notice is not legal and justified.

34. Hence, the concerned workman is entitled for relief which is as under:-

The UCO Bank, Thakurgaon Branch, Ranchi is directed to pay a sum of Rs. Three Lakhs to the concerned workmen namly Ashish Kumar as lump-sum compensation after proper verification within one month after publication of award in Official Gazette.

This is the Award of the Tribunal.

DINESH KUMAR SINGH, Presiding Officer

नई दिल्ली, 6 अप्रैल, 2023

का.आ. 733.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय खाद्य निगम के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 38/2020) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.04.2023 को प्राप्त हुआ था।

[सं. एल-22013/01/2023 -आई आर (सी.एम -II)]

मणिकंदन. एन, उप निदेशक

New Delhi, the 6th April, 2023

S.O. 733.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 38/2020) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the Management of Food Corporation of India and their workmen, received by the Central Government on 06/04/2023

[No. L- 22013/01/2023- IR(CM-II)]

MANIKANDAN. N , Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT, LUCKNOW

Present: Justice ANIL KUMAR Presiding Officer

I.D. No. 38/2020

Ref. No. D-825/AB/2020/17/IRDDN dated 09.09.2020

BETWEEN

1. Shri Alok Kumar S/o Shri Satyendra Singh
   Village – Nagla Seth, Tehsil – Kayamganj
   Distt. – Farukhabad (UP)

2. Sh. Rajender Saxena (Representative) M/s Keshav Singh and
   Ors. T.P.No. 315, Katia Tolla, Shahajanpur (UP).

AND

1. The General Manager (Principal Employer) Food Corporation of India,
   Regional office, T.C.3, V-Vibhuti Khand, Gomti Nagar, Lucknow(UP).

2. The Regional Manager (Appointing Authority), Food Corporation
   of India (FCI), Distt. Office, Shahjahanpur (UP).

AWARD

By order No. D-825/AB/2020/17/IRDDN dated 09.09.2020 the present industrial dispute has been referred for adjudication to this Tribunal in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 the Industrial Disputes Act, 1947 (14 of 1947) by the Central Government, with following schedule:

> **"Whether the termination of the service of Shri Alok Kumar S/o Shri Satyendra Singh, who was engaged in Roja Depot of FCI, Shahajanpur, (UP) by M/s Keshav Singh, Contractor of FCI, the period 08.07.2008 to 23.04.2010 is proper and justified.**

If not, to what relief, the workman is entitled to?"

Accordingly, an industrial dispute No. 38/2020 has been registered on 22.10.2020.

From the perusal of record, the position which emerge out is that the till date the claimant/workman has not filed any statement of claim.

Moreover, as a matter of fact and record, workman, Alok Kumar or his authorized representative has not turned up before this Tribunal nor has filed any statement of claim, till date, so the present reference may be dismissed.

Findings & Conclusion:

Taking into consideration the fact that till date no statement of claim has been filed by the claimant in order to establish his claim as per the reference dated 09.09.2020.

So in view of the said facts, as well as the law laid by the Hon'ble High Court in the case of *V. K. Raj Industries v. Labour Court (I) and others 1981 (29) FLR 194* as under:

> *"It is well settled that if a party challenges the legality of an order, the burden lies upon him to prove illegality of the order and if no evidence is produced the party invoking jurisdiction of the Court must fail. Whenever a workman raises a dispute challenging the validity of the termination of service if is imperative for him to file written statement before the Industrial Court setting out grounds on which the order is challenged and he must also produce evidence to prove his case. If the workman fails to appear or to file written statement or produce evidence, the dispute referred by the State Government cannot be answered in favour of the workman and he would not be entitled to any relief."*

In the case of *M/s Uptron Powertronics Employees' Union, Ghaziabad through its Secretary v. Presiding Officer, Labour Court (II), Ghaziabad and others 2008 (118) FLR 1164* Hon'ble Allahabad High Court has held as under:

> *"The law has been settled by the Apex Court in case of Shanker Chakravarti v. Britannia Biscuit Co. Ltd., V.K. Raj Industries v. Labour Court and Ors., Airtech Private Limited v. State of U.P. and Ors. 1984 (49) FLR 38 and Meritech India Ltd. v. State of U.P. and Ors. 1996 FLR that in the absence of any evidence led by or on behalf of the workman the reference is bound to be answered by the court against the workman. In such a situation it is not necessary for the employers to lead any evidence at all. The obligation to lead evidence to establish an allegation made by a party is on the party making the allegation. The test would be, who would fail if no evidence is led."*

And by the Hon'ble Allahabad High Court in the case of *District Administrative Committee, U.P. P.A.C.C.S.C. Services v. Secretary-cum-G.M. District Co-operative Bank Ltd. 2010 (126) FLR 519;* wherein it has been held as under:

> *"The submission is that even if the petitioner failed to lead the evidence, burden was on the shoulders of the respondent to prove the termination order as illegal. He was required to lead evidence first which he failed. A perusal of the impugned award also does not show that any evidence either oral or documentary was led by the respondent. In the case of no evidence, the reference has to be dismissed."*

As the workman has not filed any statement of claim/oral/documentary evidence, so the present case is liable to be dismissed.

For the foregoing reasons, the case is dismissed and; and the workman is not entitled for any relief.

Award as above.

Justice ANIL KUMAR, Presiding Officer

नई दिल्ली, 4 मई, 2023

का.आ. 734.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बड़ौदा उत्तर प्रदेश ग्रामीण बैंक के प्रबंधतत्र, संबद्ध नियोजकों और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय कानपुर के पंचाट (07/2019) प्रकाशित करती है।

[सं. एल- 12011/43/2018-आई आर (बी-I)]

सलोनी, उप निदेशक

New Delhi, the 4th May, 2023

S.O. 734.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 07/2019) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Kanpur as shown in the Annexure, in the industrial dispute between the management of Baroda Uttar Pradesh Gramin Bank and their workmen.

[No. L- 12011/43/2018- IR(B-I)]

SALONI, Dy. Director

ANNEXURE

BEFORE SHRI SOMA SHEKHAR JENA, PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL -CUM-LABOUR COURT KANPUR

Present: SOMA SHEKHAR JENA, HJS (Retd.)

I.D. No. 07 of 2019

L-12011/43/2018-IR(B-I) dated 28.12.2018

BETWEEN

The General Secretary,
Bhartiya Poorva Sainik Bank Karmchari Sangh,
02, Naveen Market Near Parade Chauraha,
Kanpur (U.P)-208001

AND

The Chairman,
Baroda Uttar Pradesh Gramin Bank,
A-1, Civil Lines,
Rae Barely, U.P-229001

AWARD

This award arises in respect of the reference mentioned in the schedule stated below as received from the Government of India, Ministry of Labour vide letter No. L-12011/43/2018-IR(B-I) dated 28.12.2018

SCHEDULE

1. **'Whether the management of Baroda UP Grameen Bank , Rae Barely has violated the transfer policy of the bank in issuing the inter region transfers orders in the year 2017 in respect of clerical cadre employees from one branch office ot another? if so, what relief the transferred workmen are entitled to?'**

On receipt of notification, notices were issued to both the parties on 15th February 2019 fixing 27.03.2019 for filing of statement of claim. Union was absent on the date fixed. Afterwards several dates were fixed for filing of statement of claim by the union.

On perusal of the record it is found that though several dates were fixed for filing of statement of claim none appeared on behalf of the claimant union before this Tribunal. Despite several opportunities to the union for submitting statement of claim; the claimant union failed to present the case before this Tribunal. Under the circumstances the case was reserved for final award for non-appearance of the union side.

From the aforesaid circumstances it is presumable that the union is not interested in prosecuting the case further before the Tribunal.

Hence in the given circumstances the reference stands disposed of as of 'NIL' award.

Parties are left to bear their respective costs.

Date: 12.12.2022 SOMA SHEKHAR JENA, Presiding Officer

नई दिल्ली, 4 मई, 2023

का.आ. 735.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में,केन्द्रीय सरकार बी बी एम बी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय नंबर 1, चंडीगढ़ के पंचाट (संदर्भ संख्या 92/2018) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02.05.2023 को प्राप्त हुआ था।

[सं. एल- 23012/147/2018-आई आर (सी एम-II)]

मणिकंदन. एन, उप निदेशक

New Delhi, the 4th May, 2023

S.O. 735.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.92/2018) of the Central Government Industrial Tribunal-cum-Labour Court NO 1,Chandigarh as shown in the Annexure, in the industrial dispute between the Management of BBMB and their workmen, received by the Central Government on 02/05/2023

[No. L-23012/147/2018 - IR(CM-II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM LABOUR COURT-I, CHANDIGARH.

Present: Sh. J.K. TRIPATHI, Presiding Officer

ID No. 92/2018

Registered on:-03.12.2018

Shri Balak Ram S/o Shri Med Ram, R/o Village Sucad,
PO Gadagusain, Tehsil Balichowki, Distt. Mandi(HP)-175001. ….Workman

Versus

1. The Chairman, Bhakra Beas Management Board, Madhya Marg, Sector 19-B, Chandigarh-160019.

2. The Chief Engineer, Bhakra Beas Management Board, BSL Project, Sundernagar-175038. ….Respondents/Managements

AWARD

Passed on:-29.03.2023

Central Government vide Notification No.L-23012/147/2018-IR(CM-II) Dated 15.11.2018, under clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

"Whether the action of management of BBMB in not accepting the demand of Sh. Balak Ram S/o Sh. Med Ram for deeming/considering him in continuous service upto age of superannuation and resultantly entitled for consequential benefits is legal, just and valid? If not, to what relief the workman concerned is entitled to and from which date?

1. On the receipt of the above reference, notice was sent to the workman as well as to the respondents/managements. The postal article sent to the workman, referred above, is duly delivered to the workman. The workman is given sufficient opportunities to file claim statement but none turned up in spite of the opportunity afforded to file claim statement, which shows that the workman is not interested in adjudication of the matter on merit.

2. Since the workman has neither put his appearance nor he has filed any statement of claim to prove his cause against the respondents/managements, as such, this Tribunal is left with no choice, except to pass a 'No Claim Award'. Accordingly, 'No Claim Award' is passed in the present reference.

3. Let copy of this award be sent to the Appropriate Government as required under Section 17 of the Act for publication.

J. K. TRIPATHI, Presiding Officer

नई दिल्ली, 4 मई, 2023

का.आ. 736.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में,केन्द्रीय सरकार बी बी एम बी के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय नंबर 1, चंडीगढ़ के पंचाट (संदर्भ संख्या 89/2018) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02.05.2023 को प्राप्त हुआ था।

[सं. एल-23012/101/2018 -आई आर (सी एम-II)]

मणिकंदन. एन, उप निदेशक

New Delhi, the 4th May, 2023

S.O. 736.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 89/2018) of the Central Government Industrial Tribunal-cum-Labour Court NO 1,Chandigarh as shown in the Annexure, in the industrial dispute between the Management of BBMB and their workmen, received by the Central Government on 02/05/2023

[No. L-23012/101/2018 - IR(CM-II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM- LABOUR COURT-I, CHANDIGARH.

Present: Sh. J.K. TRIPATHI, Presiding Officer

ID No. 89/2018
Registered on:-03.12.2018

Shri Jeet Ram S/o Shri Ghunghar Ram,
R/o Village-Chhujhaia, PO-Nanawan,
Tehsil Ghumarwin, Distt. Bilaspur(HP)-174001. ….Workman

Versus

1. The Chairman, Bhakra Beas Management Board,
Madhya Marg, Sector 19-B, Chandigarh-160019.

2. The Chief Engineer, Bhakra Beas Management Board,
BSL Project, Sundernagar-175038. ….Respondents/Managements

AWARD

Passed on:-29.03.2023

Central Government vide Notification No.L-23012/101/2018-IR(CM-II) Dated 15.11.2018, under clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

> **"Whether the action of management of BBMB in not accepting the demand of Sh. Jeet Ram S/o Sh. Ghunghar Ram for deeming/considering him in continuous service upto age of superannuation and resultantly entitled for consequential benefits is legal, just and valid? If not, to what relief the workman concerned is entitled to and from which date?**

1. On the receipt of the above reference, notice was sent to the workman as well as to the respondents/managements. The postal article sent to the workman, referred above, is duly delivered to the workman. The workman is given sufficient opportunities to file claim statement but none turned up in spite of the opportunity afforded to file claim statement, which shows that the workman is not interested in adjudication of the matter on merit.

2. Since the workman has neither put his appearance nor he has filed any statement of claim to prove his cause against the respondents/managements, as such, this Tribunal is left with no choice, except to pass a 'No Claim Award'. Accordingly, 'No Claim Award' is passed in the present reference.

3. Let copy of this award be sent to the Appropriate Government as required under Section 17 of the Act for publication.

J.K. TRIPATHI, Presiding Officer

नई दिल्ली, 4 मई, 2023

का.आ. 737.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में,केन्द्रीय सरकार बी बी एम बी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय नंबर 1, चंडीगढ़ के पंचाट (संदर्भ सं. 87/2018) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02.05.2023 को प्राप्त हुआ था।

[सं. एल-23012/87/2018 -आई आर (सी एम -II)]

मणिकंदन. एन, उप निदेशक

New Delhi, the 4th May, 2023

S.O. 737.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.87/2018) of the Central Government Industrial Tribunal-cum-Labour Court NO 1,Chandigarh as shown in the Annexure, in the industrial dispute between the Management of BBMB and their workmen, received by the Central Government on 02/05/2023

[No. L-23012/87/2018 - IR(CM-II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, CHANDIGARH.

Present: Sh. J.K. TRIPATHI, Presiding Officer

ID No. 87/2018

Registered on:-03.12.2018

Shri Gobind Ram S/o Shri Purn Chand, R/o Village Kakrah,
PO Darlaghat, Tehsil Arki, Distt. Solan(Himachal Pradesh)-173212. …Workman

Versus

1. The Chairman, Bhakra Beas Management Board,
Madhya Marg, Sector 19-B, Chandigarh-160019.

2. The Chief Engineer, Bhakra Beas Management Board,
BSL Project, Sundernagar-175038. ….Respondents/Managements

AWARD

Passed on:-29.03.2023

Central Government vide Notification No.L-23012/87/2018-IR(CM-II) Dated 15.11.2018, under clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

> **"Whether the action of management of BBMB in not accepting the demand of Sh. Gobind Ram S/o Sh. Purn Chand for deeming/considering him in continuous service upto age of superannuation and resultantly entitled for consequential benefits is legal, just and valid? If not, to what relief the workman concerned is entitled to and from which date?**

1. On the receipt of the above reference, notice was sent to the workman as well as to the respondents/managements. The postal article sent to the workman, referred above, is duly delivered to the workman. The workman is given sufficient opportunities to file claim statement but none turned up in spite of the opportunity afforded to file claim statement, which shows that the workman is not interested in adjudication of the matter on merit.

2. Since the workman has neither put his appearance nor he has filed any statement of claim to prove his cause against the respondents/managements, as such, this Tribunal is left with no choice, except to pass a 'No Claim Award'. Accordingly, 'No Claim Award' is passed in the present reference.

3. Let copy of this award be sent to the Appropriate Government as required under Section 17 of the Act for publication.

J.K. TRIPATHI, Presiding Officer

नई दिल्ली, 4 अप्रैल, 2023

का.आ. 738.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में,केन्द्रीय सरकार बी बी एम बी के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय नंबर 1, चंडीगढ़ के पंचाट (संदर्भ संख्या 98/2018) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02.05.2023 को प्राप्त हुआ था।

[सं. एल- 23012/157/2018-आई आर (सी.एम -II)]

मणिकंदन. एन, उप निदेशक

New Delhi, the 4th April, 2023

S.O. 738.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 98/2018) of the Central Government Industrial Tribunal-cum-Labour Court NO 1,Chandigarh as shown in the Annexure, in the industrial dispute between the Management of BBMB and their workmen, received by the Central Government on 02/05/2023

[No. L- 23012/157/2018- IR(CM-II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, CHANDIGARH.

Present: Sh. J.K. TRIPATHI, Presiding Officer

ID No. 98/2018

Registered on:-12.12.2018

Smt. Santi Devi & Others Wd/O Late Ramesh Chand,
Village Changar Colony, BBMB Colony, Sundernagar,
Tehsil Sundernagar Distt. MandiHP)-175001. …Workman

Versus

1. The Chairman, Bhakra Beas Management Board,
Madhya Marg, Sector 19-B, Chandigarh-160019.

2. The Chief Engineer, Bhakra Beas Management Board,
BSL Project, Sundernagar-175038. …Respondents/Managements

AWARD

Passed on:-29.03.2023

Central Government vide Notification No.L-23012/157/2018-IR(CM-II) Dated 22.11.2018, under clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

> **"Whether the action of management of BBMB in not accepting the demands of Smt. Santi Devi & Others Wd/O Late Ramesh Chand for declaring his retrenchment /termination as illegal and considering him in continuous service upto age of superannuation resulting in entitlement of consequential benefits is legal, just and valid? If not, to what relief the legal heirs/legal representatives of late workman are is entitled to and from which date?**

1. On the receipt of the above reference, notice was sent to the workman as well as to the respondents/managements. The postal article sent to the workman, referred above, is received back with the report that the workman is dead. Since the workman is dead and none is approached to this Tribunal as the legal heirs of the deceased-workman, which shows that the legal heirs of the deceased-workman is not interested in adjudication of the case on merit nor they have filed any statement of claim to prove their cause against the respondents/managements, as such, this Tribunal is left with no choice, except to pass a 'No Claim Award'. Accordingly, 'No Claim Award' is passed in the present reference.

2. Let copy of this award be sent to the Appropriate Government as required under Section 17 of the Act for publication.

J. K. TRIPATHI, Presiding Officer

नई दिल्ली, 4 मई, 2023

का.आ. 739.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में,केन्द्रीय सरकार बी बी एम बी, बी एम बी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच,

अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय नंबर 1, चंडीगढ़ के पंचाट (संदर्भ संख्या 97/2018) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02.05.2023 को प्राप्त हुआ था।

[सं. एल-23012/167/2018-आई आर (सी एम-II)]

मणिकंदन. एन, उप निदेशक

New Delhi, the 4th May, 2023

S.O. 739.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 97/2018) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Chandigarh as shown in the Annexure, in the industrial dispute between the Management of BBMB, and their workmen, received by the Central Government on 02/05/2023

[No. L-23012/167/2018- IR(CM-II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, CHANDIGARH.

Present: Sh. J.K. TRIPATHI, Presiding Officer

ID No.97/2018

Registered on:-12.12.2018

Smt. Sharvati Devi W/o Shri Ram Swaroop, H.No.275, S-I,
Sundernagar Township Colony, Sunder Nagar,
Distt. Mandi(HP)-175001. ……..Workman

Versus

1. The Chairman, Bhakra Beas Management Board, Madhya Marg, Sector 19-B, Chandigarh-160019.
2. The Chief Engineer, Bhakra Beas Management Board, BSL Project, Sundernagar-175038. ..…Respondents/Managements

AWARD

Passed on:-29.03.2023

Central Government vide Notification No.L-23012/167/2018-IR(CM-II) Dated 22.11.2018, under clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

> **"Whether the action of management of BBMB in terminating the services of Smt. Sharvati Devi W/o Shri Ram Swaroop w.e.f. 10.12.2012 in violation of Sections 25-F, 25-G & 25-H of the ID Act is just, fair and legal? If not, to what relief the workman is entitled?**

1. On the receipt of the above reference, notice was sent to the workman as well as to the respondents/managements. The postal article sent to the workman, referred above, is duly delivered to the workman. The workman is given sufficient opportunities to file claim statement but none turned up in spite of the opportunity afforded to file claim statement, which shows that the workman is not interested in adjudication of the matter on merit.

2. Since the workman has neither put his appearance nor she has filed any statement of claim to prove her cause against the respondents/managements, as such, this Tribunal is left with no choice, except to pass a 'No Claim Award'. Accordingly, 'No Claim Award' is passed in the present reference.

3. Let copy of this award be sent to the Appropriate Government as required under Section 17 of the Act for publication.

J. K. TRIPATHI, Presiding Officer

नई दिल्ली, 4 मई, 2023

का.आ. 740.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में,केन्द्रीय सरकार बी बी एम बी,बी एस एल पी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय नंबर 1,चंडीगढ़ के पंचाट (संदर्भ संख्या 1/2018) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02.05.2023 को प्राप्त हुआ था।

[सं. एल-23012/97/2017 -आई आर (सी एम-II)]

मणिकंदन. एन, उप निदेशक

New Delhi, the 4th May, 2023

S.O. 740.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.1/2018) of the Central Government Industrial Tribunal-cum-Labour Court NO 1, Chandigarh as shown in the Annexure, in the industrial dispute between the Management of BBMB,BSLP and their workmen, received by the Central Government on 02/05/2023

[No. L-23012/97/2017 - IR(CM-II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, CHANDIGARH.

Present: Sh. J.K. TRIPATHI, Presiding Officer

ID No.1/2018

Registered on:-19.04.2018

Shri Hem Chand S/o Shri Sohan Singh, VPO-Mermasgid,
Tehsil-Sunder Nagar, Distt. Mandi(HP). …Workman

Versus

1. The Chairman, Bhakra Beas Management Board,
Madhya Marg, Sector 19-B, Chandigarh-160019.

2. The Chief Engineer, Bhakra Beas Management Board,
BSL Project, Sundernagar-175038. ….Respondents/Managements

AWARD

Passed on:-29.03.2023

Central Government vide Notification No.L-23012/97/2017-IR(CM-II) Dated 19.03.2018, under clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

> **"Whether the action of management of BBMB in terminating the service of Shri Hem Chand S/o Shri Sohan Singh w.e.f. 10.12.2012 in violation of Sections 25-F, 25-G & 25-H of the ID Act is just fair and legal? If not, to what relief the workman is entitled?**

1. On the receipt of the above reference, notice was sent to the workman as well as to the respondents/managements. The postal article sent to the workman, referred above, is duly delivered to the workman. The workman is given sufficient opportunities to file claim statement but none turned up in spite of the opportunity afforded to file claim statement, which shows that the workman is not interested in adjudication of the matter on merit.

2. Since the workman has neither put his appearance nor he has filed any statement of claim to prove his cause against the respondents/managements, as such, this Tribunal is left with no choice, except to pass a 'No Claim Award'. Accordingly, 'No Claim Award' is passed in the present reference.

3. Let copy of this award be sent to the Appropriate Government as required under Section 17 of the Act for publication.

J. K. TRIPATHI, Presiding Officer

नई दिल्ली, 4 मई, 2023

का.आ. 741.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी बी एम बी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय नंबर 1, चंडीगढ़ के पंचाट (संदर्भ संख्या 88/2018) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02.05.2023 को प्राप्त हुआ था।

[सं. एल- 23012/89/2018-आई आर (सी.एम -II)]

मणिकंदन. एन, उप निदेशक

New Delhi, the 4th May, 2023

S.O. 741.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 88/2018*)* of the Central Government Industrial Tribunal-cum-Labour Court NO 1,Chandigarh as shown in the Annexure, in the industrial dispute between the Management of BBMB and their workmen, received by the Central Government on 02*/05/2023*

[No. L- 23012/89/2018- IR(CM -II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, CHANDIGARH.

Present: Sh. J.K. TRIPATHI, Presiding Officer

ID No.88/2018

Registered on:-03.12.2018

Shri Dand Ram S/o Shri Khajana Ram, R/o Village
& PO Hawan Tehsil, Ghumarwin Distt. Bilaspur(HP)-174001. ….Workman

Versus

1. The Chairman, Bhakra Beas Management Board,
Madhya Marg, Sector 19-B, Chandigarh-160019.

2. The Chief Engineer, Bhakra Beas Management Board,
BSL Project, Sundernagar-175038. ….Respondents/Managements

AWARD

Passed on:-29.03.2023

Central Government vide Notification No.L-23012/89/2018-IR(CM-II) Dated 15.11.2018, under clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

> **"Whether the action of management of BBMB in not accepting the demand of Sh. Dandu Ram S/o Sh. Khajana Ram for deeming/considering him in continuous service upto age of superannuation and resultantly entitled for consequential benefits is legal, just and valid? If not, to what relief the workman concerned is entitled to and from which date?**

1. On the receipt of the above reference, notice was sent to the workman as well as to the respondents/managements. The postal article sent to the workman, referred above, is duly delivered to the workman. The workman is given sufficient opportunities to file claim statement but none turned up in spite of the opportunity afforded to file claim statement, which shows that the workman is not interested in adjudication of the matter on merit.

2. Since the workman has neither put his appearance nor he has filed any statement of claim to prove his cause against the respondents/managements, as such, this Tribunal is left with no choice, except to pass a 'No Claim Award'. Accordingly, 'No Claim Award' is passed in the present reference.

3. Let copy of this award be sent to the Appropriate Government as required under Section 17 of the Act for publication.

J. K. TRIPATHI, Presiding Officer

नई दिल्ली, 4 मई, 2023

का.आ. 742.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में,केन्द्रीय सरकार बी बी एम बी के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय नंबर 1, चंडीगढ़ के पंचाट (संदर्भ संख्या 91/2018) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02.05.2023 को प्राप्त हुआ था।

[सं. एल-23012/131/2018 -आई आर (सी एम-II)]

मणिकंदन. एन, उप निदेशक

New Delhi, the 4th May, 2023

S.O. 742.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.91/2018) of the Central Government Industrial Tribunal-cum-Labour Court NO 1,Chandigarh as shown in the Annexure, in the industrial dispute between the Management of BBMB and their workmen, received by the Central Government on 02/05/2023

[No. L- 23012/131/2018- IR(CM-II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, CHANDIGARH.

Present: Sh. J.K. TRIPATHI, Presiding Officer

ID No.91/2018

Registered on:-03.12.2018

Shri Gauri Dutt S/o Shri Polru Ram, R/o Village-Tandi,
PO-Saroa Via Pandoh, Tehsil-Sadar, Distt-Mandi(HP)-175001. ….Workman

Versus

1. The Chairman, Bhakra Beas Management Board,
Madhya Marg, Sector 19-B, Chandigarh-160019.
2. The Chief Engineer, Bhakra Beas Management Board,
BSL Project, Sundernagar-175038. ….Respondents/Managements

AWARD

Passed on:-29.03.2023

Central Government vide Notification No.L-23012/131/2018-IR(CM-II) Dated 15.11.2018, under clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

> **"Whether the action of management of BBMB in not accepting the demand of Sh. Gauri Dutt S/o Sh. Polru Ram for deeming/considering him in continuous service upto age of superannuation and resultantly entitled for consequential benefits is legal, just and valid? If not, to what relief the workman concerned is entitled to and from which date?**

1. On the receipt of the above reference, notice was sent to the workman as well as to the respondents/managements. The postal article sent to the workman, referred above, is duly delivered to the workman. The workman is given sufficient opportunities to file claim statement but none turned up in spite of the opportunity afforded to file claim statement, which shows that the workman is not interested in adjudication of the matter on merit.

2. Since the workman has neither put his appearance nor he has filed any statement of claim to prove his cause against the respondents/managements, as such, this Tribunal is left with no choice, except to pass a 'No Claim Award'. Accordingly, 'No Claim Award' is passed in the present reference.

3. Let copy of this award be sent to the Appropriate Government as required under Section 17 of the Act for publication.

J. K. TRIPATHI, Presiding Officer

नई दिल्ली, 4 मई, 2023

का.आ. 743.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **ग्रामीण बैंक ऑफ़ आर्यव्रत** के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, **कानपुर** के पंचाट (75/2019) प्रकाशित करती है।

[सं. एल-12025/01/2023 -आई आर (बी-I)-30]

सलोनी, उप निदेशक

New Delhi, the 4th May, 2023

S.O. 743.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 75/2019) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Kanpur as shown in the Annexure, in the industrial dispute between the management of Gramin Bank of Aryvart and their workmen.

[No. L- 12025/01/2023- IR(B-I)-30]

SALONI, Dy. Director

ANNEXURE

BEFORE SHRI SOMA SHEKHAR JENA, PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT KANPUR

Present: SOMA SHEKHAR JENA HJS (Retd.)

I.D. No. 75 of 2019

BETWEEN

Shri Kamla Chaurasia s/o Ram Prasad Chaurasia
Through Shri Avinash Yadav
the General Secretary U.P Gramin Bank Kamgar Union,
Bajaramau, Chaubeypur, Kanpur (U.P)-209203

AND

The General Manager,
Gramin Bank of Aryavart
Head Office A-2/46, Vijay Khand,
Gomti Nagar, Lucknow-226010

AWARD

This award arises in respect of the case raised under section 2A of Industrial Disputes Act, 1947 on 15.02.2019

On 15th February 2019 the statement of claim was filed by the claimant union before this Tribunal. On behalf of O.P. management Authorized Representative appeared and filed the letter of authority and the written statement on 02.12.2020. Thereafter case was fixed for filing of rejoinder by the claimant union. But even after getting several opportunities claimant Union failed to file rejoinder before this Tribunal.

On perusal of the record it is found that though several dates were fixed for filing the rejoinder by the claimant union, none appeared on behalf of the claimant union before this Tribunal. Despite several opportunities to the claimant union for submitting rejoinder the same has not been filed. Pleadings cannot be read as substantive evidence. There is no evidence on behalf of the claimant Union that the workman was appointed on any post of the Bank after undergoing regular selection process. Under normal circumstances a casual worker engaged on daily wages is not legally entitled for absorption on regular post. Finally the case was reserved for final award for non prosecution by the claimant union.

From the aforesaid circumstances it is presumable that the claimant union is not interested in prosecuting the case further before this Tribunal.

Hence in the given circumstances the reference stands disposed of as of 'NIL' award.

Parties are left to bear their respective costs.

Date: 17.01.2023 SOMA SHEKHAR JENA, Presiding Officer

नई दिल्ली, 4 मई, 2023

का.आ. 744.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **ग्रामीण बैंक ऑफ़ आर्यव्रत** के प्रबंधतत्र, संबद्ध नियोजकों और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट **औद्योगिक** विवाद में केन्द्रीय सरकार **औद्योगिक** अधिकरण/श्रम न्यायालय, **कानपुर** के पंचाट (36/2019) प्रकाशित करती है।

[सं. एल- 12025/01/2023-आई आर (बी-I)-57]

सलोनी, उप निदेशक

New Delhi, the 4th May, 2023

S.O. 744.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 36/2019) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Kanpur as shown in the Annexure, in the industrial dispute between the management of Gramin Bank of Aryvart and their workmen.

[No. L- 12025/01/2023- IR(B-I)-57]

SALONI, Dy. Director

ANNEXURE

BEFORE SHRI SOMA SHEKHAR JENA, PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT KANPUR

Present: SOMA SHEKHAR JENA HJS (Retd.)

I.D. No. 36 of 2019

BETWEEN

Shri Ramesh S/o Bhajan Lal
Through Shri Avinash Yadav
the General Secretary U.P Gramin Bank Kamgar Union,
Bajaramau, Chaubeypur, Kanpur (U.P)-209203

AND

The General Manager,
Gramin Bank of Aryavart
Head Office A-2/46, Vijay Khand,
Gomti Nagar, Lucknow-226010

AWARD

This award arises in respect of the case raised under section 2A of Industrial Disputes Act, 1947 on 30.01.2019

On 30th January 2019 the statement of claim was filed by the claimant union before this Tribunal. On behalf of O.P. management Authorized Representative appeared and filed the letter of authority and the written statement on 21.12.2020. Thereafter case was fixed for filing of rejoinder by the claimant union. But even after getting several opportunities claimant Union failed to file rejoinder before this Tribunal.

On perusal of the record it is found that though several dates were fixed for filing the rejoinder by the claimant union, none appeared on behalf of the claimant union before this Tribunal. Despite several opportunities to the claimant union for submitting rejoinder the same has not been filed. Pleadings cannot be read as substantive evidence. There is no evidence on behalf of the claimant Union that the workman was appointed on any post of the Bank after undergoing regular selection process. Under normal circumstances a casual worker engaged on daily wages is not legally entitled for absorption on regular post. Finally the case was reserved for final award for non prosecution by the claimant union.

From the aforesaid circumstances it is presumable that the claimant union is not interested in prosecuting the case further before this Tribunal.

Hence in the given circumstances the reference stands disposed of as of 'NIL' award.

Parties are left to bear their respective costs.

Date: 12.04.2023 SOMA SHEKHAR JENA, Presiding Officer

नई दिल्ली, 4 मई, 2023

का.आ. 745.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार अतिरिक्त प्रबंधक (कार्मिक एवं प्रशासन), इंडियन टेलीफोन इंडस्ट्रीज लिमिटेड, रायबरेली, के प्रबंधतंत्र के संबद्ध नियोजकों और श्री राजेंद्र प्रसाद शर्मा, कामगार,के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 64/2013) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 4/05/2023 को प्राप्त हुआ था।

[सं. एल-40012-05-2007 -आई आर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 4th May, 2023

S.O. 745.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 64/2013) of the Central Government Industrial Tribunal cum Labour Court–Lucknow, as shown in the Annexure, in the Industrial dispute between the employers in relation The Addl. General. Manager (Personnel & Administration),Indian Telephone Industries Ltd., RaiBareilly, and Shri Rejendra Prasad Sharma, Worker, which was received along with soft copy of the award by the Central Government on 04/05/2023.

[No. L- 40012-05-2007- IR(DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT

LUCKNOW

Present: Justice ANIL KUMAR, Presiding Officer

Ref. No. L-40012/5/2007-IR(DU) dated 03.05.2007

I. D. No. 64/2013

Shri Rejendra Prasad Sharma S/o Shri Pandit Ram Saran Sharma
R/o H. No. B/31, Basant Enclave, DDA Janta Flats, New Delhi

AND

The Addl. Gen. Manager (Personnel & Administration)
Indian Telephone Industries Ltd.
RaiBareli (Distt.) – 229010

AWARD

By order No. L-40012/5/2007-IR(DU) dated 03.05.2007 the Central Government, Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute for adjudication, following dispute for adjudication:

> **"Whether the action of the management of Additional General Manager (Personal and Administration). Indian Telephone Industries Ltd., Rai Bareili, in terminating the services of their workman Shri Rajendra Prasad Sharma w.e.f. 19.8.2000 is legal and justified? If not, what relief the workman is entitled to?"**

Accordingly, the present industrial dispute has been registered before the Tribunal.

Case of the claimant:

Sri Vimal Kumar, learned counsel for the claimant submits that workman, Rajendra Prasad Sharma was appointed on 19.07.1979 on the post of driver on temporary basis, joined his duties and posted at ITI, Delhi.

By an order dated 14.09.1987 the services of the claimant were regularized on the post of driver w.e.f. 02.03.1985.

Thereafter on 16.02.1999 he was transferred to RaiBareli on the post of Driver. While he was working and discharging his duties on the post of driver he received an information that his father, at Delhi was suffering from lung cancer, seriously ill, so, he applied for a leave, sanctioned for three days and proceeded on 11.06.2000 to Delhi.

As the condition of his father was not well so he stayed at Delhi after expiry of period of leave, already sanctioned to him.

On 22.06.2000 he reported back to duties, submitted an application for joining allowed to join his duties on the post of driver, till 23.06.2000.

On 24.06.2000 he received an information that his wife taking care of his father has fallen ill, so, having no other alternative before him, he proceeded to Delhi on 24.06.2000 and on 17.07.2000, returned back to Raibareli, submitted an application for joining (M-5).

On the said application on 19.07.2000 an order was passed by Asstt. Personnel Officer (Establishment), Appointing Authority, which reads as under:

"JOINING REPORT

After unauthorised absence from duty w.e.f. 24.6.2000 Shri Rajendra Prasad Staff No.058354 Cat. 'D' has resumed his duties in Estt. Section x 17.7.2000 (F/N).

He is directed to report to CM(See. for further instructions with advise not to pe such type of act in future."

However, claimant was not allowed by the Chief Manager (Fire & Security) to work and discharge his duties, and no work was allotted to him.

Learned counsel for the claimant further submits, again on 24.07.2000 he received information that his wife was ill, so rushed to Delhi, while he was at Delhi he came to know that by order dated 19.08.2000 his services were terminated.

Aggrieved by order of termination, claimant filed a W.P. No. 22 (SS) of 2000 Rajendra Prasad Sharma vs. ITI Ltd, dismissed by an order dated 08.03.2006 on the ground of alternate remedy, reads as under:

"The petitioner has challenged termination order dated 19.08.2000. The petitioner has an alternative and efficacious remedy before Labour Court.

The Writ Petition is dismissed on the ground of alternative remedy. The petitioner may approach the Labour Court in accordance with law, if he so desires."

In view of said factual background, applicant, approached appropriate authority raising industrial dispute as per provisions u/s 10 of the Industrial Disputes Act, 1947, and the matter was referred to the CGIT, New Delhi.

Accordingly, on 12.07.2007 the claimant Rajendra Prasad Sharma filed an I.D. Case no. 13/2007 before CGIT-II, N. Delhi.

It is further submitted on behalf of the claimant that reference as well as the matter in regard to raising industrial dispute by the claimant before the Industrial Tribunal, New Delhi was challenged by the respondent by filing WP No. 4636 (MS) 2007, Asstt. Personnel Manager (P&A), ITI, Ltd vs. U. O. I. through Desk Officer, Ministry of Labour, New Delhi.

By order dated 11.04.2008 Hon'ble High Court, directed that the ID case which, filed by the workman, aggrieved by the order dated 19.08.2000 by which services were terminated on the ground of unauthorized absence, to be transferred to CGIT, Lucknow.

Thereafter, before this Tribunal, ID case No. 64/2013 Rajendra Prasad Sharma vs. ITI, was registered.

In view of the said factual background, Sri Vimal Kumar, advocate argued that action on the part of the respondent thereby terminating the services of the workman on the ground of unauthorized absence vide order dated 19.08.2000 is totally in violation of principles of natural justice as well as it is contrary to the provisions as provide under Clause 11.7 of the Standing Order for M/s ITI Limited, RaeBareli Plant, RaeBareli (UP), certified under the Industrial Employment (Standing Orders) Act, 1946 (hereinafter referred to as the Standing Order); because, claimant is a regular employee, so his service terminated by invoking clause 11.7 of the Standing Order on the ground of absence without is totally contrary to law, in support of said argument, placed reliance on the following judgment:

1. *D.K Yadav VS M/s J.M.A Industries Limited 1993 AIR SCW 1995.*
2. *M/s Lakshmi Precision Screws Ltd Vs. Ram Bhagat 2002 AIR SCW 3324.*
3. *Union of India And others VS. Dinanath Shantaram Karekars& Others 1998 AIR SCW 2772.*
4. *Biraj @ Brijraji & another VS. Surya Pratap & others Civil Appeal no. 4883-4884 of 2017.*
5. *M/s Scooters India Ltd Vs. M. Mohammad Yaqub & Another [AIR 2001 S.C 227.*

6. *Uptron India Limited Vs. Shammi Bhan And Another 1998 AIR SCW 1447.*

7. *M/s Hindustan Tin Works Pvt Ltd VS. The Employee of M/S Hindustan Tin Works Pvt. Ltd AIR 1979 SC 75.*

8. *Allahabad Bank VS. Avtar Bhusan Bhartiya AIR 2022 SC 3025.*

9. *Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed) And others 2013 SCW 5330.*

10. *Bhuwanesh Kumar Dwivedi Vs. Ms. Hindalco Industries Ltd AIR 2014 S.C 2258.*

11. *Salim Ali Centre for Ornithology & Natural History, Coimbatore & Another Vs. Dr. Mathew K Sebastian 2022 Live Law (SC) 377.*

Sri Vimal Kumar, counsel for the claimant submitted that during pendency of present case, claimant/workman has attained, age of superannuation on 06.08.2011.

Accordingly, it is submitted by Sri Vimal Kumar, learned counsel for claimant request that in view of the above said facts and the law on the point in issue, impugned order dated 19.08.2000, by which services of the claimant was terminated, may kindly be set aside, and the respondent may be directed to pay salary and other consequential benefits w.e.f. 19.08.2000 to 06.08.2011 i.e. till the date of his retirement and thereafter the retiral dues as per laws.

Case of the respondent:

On behalf of the respondent, Sri Adarsh Jagdhari, in support of the case of respondent, placed reliance has been placed on following paragraph of the written statement, reproduced herein below:

"*"4. That the past record of the concerned workman was not clean. It is submitted that the concerned workman was awarded punishment of with holding of three increments for committing an act of misconduct of unauthorized withdrawal of petrol. The concerned workman was issued a Show Cause Notice dated 31- 07-1995, Charge Sheet dated 28-08-1995 for withdrawal of unauthorized petrol from IBP on holidays on days he was on leave. An enquiry was initiated against the concerned workman. The concerned workman admitted the charges in writing vide application dated 29-09-1995 during the course of enquiry. Therefore punishment of with holding of three increments along with recovery of Rs.12759.83/- was awarded to him vide Order dated 12-12-1995.*

5. That the concerned workman while working at Regional Office New Delhi again committed a gross act of misconduct of stealing Company's property. The concerned workman was placed under suspension vide Order dated 06-12-1996 and a Charge sheet dated 06/09-12-1996 was issued to him. The concerned workman submitted his explanation dated 12-12-1996 to the Charge sheet. The reply submitted by the concerned workman was not found satisfactory. Hence Competent Authority took a decision to conduct domestic enquiry against the concerned workman. The order of enquiry dated 12-12-1996 to the effect was issued. A fair and proper domestic enquiry was conducted. The charges leveled against the concerned workman Sri R. P. Sharma were proved. Though the charge were grave and the punishment of dismissal could have been awarded to Sri R.P.Sharma but taking a lenient view the concerned workman was awarded punishment of demotion to lower category i.e. Category D vide Order dated 11-7-1997.

6. That the concerned workman was habitual absconder and used to remain absent on unauthorized leave while working at ITI Limited Rae Bareli. The concerned workman remained absent for the period mentioned below without any prior permission, application of leave for intimation

March	*1999*	*08 days*
April	*1999*	*06 days*
October	*1999*	*05 days*
November	*1999*	*6.4 days*
March	*2000*	*2.4 days*
April	*2000*	*30 days*
May	*2000*	*09 days*

June	*2000*	*16.4 days*
July	*2000*	*31 days*
August	*2000*	*18 days (till 18.8.2000)*

The applicant was absconding from duties continuously with effect from 15-06-2000. The relevant provision 11.7 of the Company's certified Standing Order provides as under :-

"Clause 11.7 If an employee absents himself without leave for more than fifteen days or remains absent beyond the period of leave granted for more than fifteen days, he shall be considered as having voluntarily left and abandoned the Company's services and voluntarily terminated his employment with Company without notice."

7. That the concerned workman was continuously absenting from duties without any application for sanction of leave or intimation since 15-06-2000.

8. That the concerned workman submitted an application for permission to join the duty on 17-07-2000, he was allowed to join duty on 19-7-2000. The applicant joined the duty in Establishment Section of ITI Limited and thereafter he was directed to report for discharging the duties under the concerned department but the applicant again absented himself from duty without any reason or application or sanction of leave with effect from 19-07-2000.

9. That a Show Cause Notice dated 31-07-2000 was also issued to concerned workman at his home address within the campus of ITI Limited Rae Bareli available on the record.

10. That in the circumstances stated above Employers had no other alternative left but to strike off his name from Company's rolls. Accordingly, letter dated 19-08-2000 was issued to the effect that applicant's services have been automatically terminated as he has voluntarily left the Company's services under the provision of 11.7 of Company's certified Standing Order."

Accordingly, Sri Adarsh Jagdhari, learned counsel for ITI on the basis of documents and evidence filed on behalf of the respondent/ITI submits, that the claimant, Rajendra Prasad Sharma while working on the post of driver allotted house at RaiBareli, (H. No. H-838-840, Secator-II, Doorbhash Nagar, RaiBareli) within the campus of ITI, RaiBareli.

And on 11.06.2000, submitted an application that his father was ill and three days' leave was granted to him; accordingly, he proceeded to Delhi. He was to report back duties on 14.06.2000; however, he reported back to duty on 22.06.2000 by submitting an application (Ex-M-3), praying that he may be allowed to join his duties, allowed to join the duties w.e.f. 22.06.2000 (Ex-M-9).

Sri Adarsh Jagdhari, learned counsel for ITI further submits that again on 24.06.2000 claimant again without informing, authorities under whom he was working or submitting any application for leave, willfully and deliberately left the duties, thereafter on 17.07.2000 he submitted an application, inter alia stating that as his wife was seriously ill so had to proceed to Delhi, so he may be allowed to join duties (Ex-M-5).

On the said application an order dated 19.07.2000 has been passed, by which he was directed to report to Chief Manager (Fire & Services) (Ex-M-6). However, claimant deliberately did not report for duties to the said authority i.e. Chief Manager (Fire & Services), ITI Limited, RaiBareli, so, a show cause notice dated 31.07.2000/01.08.2000 was issued (letter No. A/58354/D-1198/1/8) to applicant to submit his reply, of the said notice was sent through Ram Karan, process server; however, he returned the envelop in which the notice was sent to applicant that claimant/workman was not available at his quarter/house (H-838-840)allotted to him at RaiBareli.

Again, on 02.08.2000 by Sri Ram Karan, Process Seriver, same was pasted (chaspa) on the quarter no. H-838-840, allotted to workamn in presence of one Sri Goldie Singh S/o Majid Singh who was residing in quarter no. 838.

Accordingly, learned counsel for respondent argued that it is totally incorrect on the part of the claimant that the services of applicant were terminated not in pursuance to clause 11.7 read with Clause 34 of Standing Order, which reads as under:

"34. SERVICE OF ORDERS, NOTICES ETC. ON EMPLOYEES

In cases where an order, notice, etc. can not be served on an employee because he is on leave or for any other reason whatsoever, a copy shall be sent to him by registered post at his last known address registered with the Company or displayed on the Company's notice board. Such posting

of orders, notices, etc. shall be deemed to be good service in law of the order etc., on the employee."

He further submits that so far as argument advanced by the learned counsel for applicant that notices to applicant was not served as per clause 34 of Standing Order is totally incorrect and wrong because from bare reading of said clause the position which emerges out, is that in case where an order, notice etc. cannot be served on an employee because, he is on leave or for any other reason whatsoever, a copy shall be sent to him by registered post at his last known address registered with the company or displayed on the Company's notice board.

In the present case, the competent authority tried to serve the show cause notice dated 31.07.2000/01.08.2000 through process server, Ram Karan; but the same was returned by him with endorsement " RT C 838-840 सेक्टर द्वितीय घर में ताला बंद था में कोई नहीं मिला है। 12 - 14 बजे तक ढूंढने पर नहीं मिला है।", so, the same was pasted on his quarter no. 838-840, last registered address available with the Company in present of a witness (Goldie), as such, it is proper service of show cause notice on applicant, in spite of the same, he did not give any reply.

In this regard he has placed reliance on the para 10 of evidence on affidavit (Examination in Chief), of claimant, quoted herein below:

"10. यह कि दिनांक 03.08.2000 को श्री आर.पी. पाण्डेय, तत्कालीन चीफ परर्सनल मैनेजर की सूचना पर शपथी 03.08.2000 को रायबरेली आया तथा 03.08.2000 से 21.08.2000 तक लगातार चीफ परसर्नल मैनेजर, चीफ मैनेजर सिक्योरिटी एण्ड फायर का चक्कर लगाता रहा लेकिन शपथी को ड्यूटी नहीं दी गयी नहीं ड्यूटी न देने का कोई कारण बताया गया।

11. यह कि और कोई उपचार न होने पर शपथी ने दिनांक 15.09.2000 को मुख्य प्रबन्धक आई.टी.आई. से अपने ऊपर हो रहे अत्याचार की कहानी लिखित पत्र के माध्यम से सूचित किया तथा उनसे निवेदन किया कि मामले की जाँच कर दोषी व्यक्तियों के खिलाफ कार्यवाही की जाए।

12. यह कि शपथी के पत्र 15.09.2000 का उत्तर सेवायोजक द्वारा दिनांक 20.09.2000 दिया गया तब शपथी को ज्ञात हुआ कि सेवायोजकों ने शपथी की सेवायें बिना कोई विभागीय जाँच किये दिनांक 19.08.2000 को समाप्त कर दिया है।"

However, in spite of the services of show cause notice, as no reply to show cause notice was given by the applicant so, his services terminated as per clause 11.7 by order dated 19.08.2000, issued by Asstt. Personnel Manager (Establishment/Appointment), which is perfectly valid.

Sri Adarsh Jagdhari, learned counsel for respondent has justified the impugned order on the basis of judgment passed by the Hon'ble Orissa High Court passed in the case of ***Sri Narasingha Biswal vs. Management of the Chief General Manager, Talcher Area of M.C.L. 2022 (175) FLR 7165***, relevant portion reads as under:

"8. The third decision relied on by the Petitioner is Samittri Devi v. Sampuran Singh, where it was held that the postal receipt showing dispatch of the letter under certificate of posting was sufficient proof of dispatch of the letter. In the present case, as noted by the CGIT, even assuming that the two letters written by the Petitioner to the employer on 3rd April, 1998 and 6th October, 1998 are presumed to have been dispatched, their contents do not indicate that the Petitioner sought permission to remain on leave."

In the case of ***State of Uttarakhand and Ors. Vs Sureshwati (2021) 3 SCC 108,*** Hon'ble Supreme Court, the relevant portion as under:

"32. From those decisions, the following principles broadly emerge:

(1) The right to take disciplinary action and to decide upon the quantum of punishment are mainly managerial functions, but if a dispute is referred to a Tribunal, the latter has power to see if action of the employer is justified.

(2) Before imposing the punishment, an employer is expected to conduct a proper enquiry in accordance with the provisions of the Standing Orders, if applicable, and principles of natural justice. The enquiry should not be an empty formality.

(3) When a proper enquiry has been held by an employer, and the finding of misconduct is a plausible conclusion flowing from the evidence, adduced at the said enquiry, the Tribunal has no jurisdiction to sit in judgment over the decision of the employer as an appellate body. The interference with the decision of the employer will be justified only when the findings arrived at in the enquiry are perverse or the management is guilty of victimisation, unfair labour practice or mala fide.

(4) Even if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, had to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action, and it is open to the employee to adduce evidence contra.

(5) The effect of an employer not holding an enquiry is that the Tribunal would not have to consider only whether there was a prima facie case. On the other hand, the issue about the merits of the impugned order of dismissal or discharge is at large before the Tribunal and the latter, on the evidence adduced before it, has to decide for itself whether the misconduct alleged is proved. In such cases, the point about the exercise of managerial functions does not arise at all. A case of defective enquiry stands on the same footing as no enquiry.

(6) The Tribunal gets jurisdiction to consider the evidence placed before it for the first time in justification of the action taken only, if no enquiry has been held or after the enquiry conducted by an employer is found to be defective.

(7) It has never been recognised that the Tribunal should straightaway, without anything more, direct reinstatement of a dismissed or discharged employee, once it is found that no domestic enquiry has been held or the said enquiry is found to be defective.

(8) An employer, who wants to avail himself of the opportunity of adducing evidence for the first time before the Tribunal to justify his action, should ask for it at the appropriate stage. If such an opportunity is asked for, the Tribunal has no power to refuse. The giving of an opportunity to an employer to adduce evidence for the first time before the Tribunal is in the interest of both the management and the employee and to enable the Tribunal itself to be satisfied about the alleged misconduct.

(9) Once the misconduct is proved either in the enquiry conducted by an employer or by the evidence placed before a Tribunal for the first time, punishment imposed cannot be interfered with by the Tribunal except in cases where the punishment is so harsh as to suggest victimisation.

(10) In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in Management of Panitole Tea Estate v. Workmen (1971) 1 SCC 742 within the judicial decision of a Labour Court or Tribunal."

Sri Adarsh Jagdhari, learned counsel for respondent, submits that in view of the facts and law as stated hereinabove, claimant is neither entitled for reinstatement nor wages in view of law as laid down in the case of *P.V.K. Distillery Limited v. Mahendra Ram (2009) 2 SCC (L&S) 134* and case, is liable to be dismissed.

Submissions on behalf of claimant in rejoinder:

Sri Vimal Kumar, in rebuttal, submits that on 24.07.2000 claimant rushed to Delhi after getting information that his wife was ill in Delhi, so he was not available in residence no. H-838-840, so the pleading/argument raised on behalf of respondent that show cause notice was served by way of 'chaspa' etc. is meaningless and cannot be said to be a proper services of notice in view of the clause 34 of the Standing Order, as such, the impugned order dated 19.08.2000 is illegal. In support of his argument he has placed reliance on the judgment, passed by the Hon'ble Apex Curt in the case of *Union of India v. Dinanath Shantaram Karekar & others AIR 1998 SC 2722*.

Accordingly, he submits that impugned order dated 19.08.2000 by which his services have been terminated either without serving show casue notice or without giving any opportunity whatsoever and further in contravention to the provisions of Standing Order, as well as principle of natural justice.

Sri Vimal Kumar also submits that so far as the argument raised on behalf of the respodent that by means of order dated 19.07.2000 he was directed to report for duties to Chief Manager (Fire & Services), workman did not report for duties is totally in correct and wrong because he reported for duties but was not allowed to join.

Sri Vimal Kumar also argued that action on the part of respondent thereby terminating the services of the applicant on the ground that he was unauthorizedly absent from 14.07.2000 till 31.07.2000 by invoking clause no 11.7 is wholly illegal and arbitrary because on his application, dated 17.07.2000 (Ex-M-5), an order dated 19.07.2000 (Ex-M-6), issued by Asstt. Personnel Officer (Establishment) by which he was allowed to resume his duties and directed to report Chief Manger (Fire & Services) with an advice not to repeat such type of act in future, so as per the own document on behalf of the respondent, he was not unauthorizedly absent for 15 days as such, his services cannot be terminated in view of clause 11.7 of Standing Order.

Learned counsel for the applicant also submits that from the date termination from 19.08.2000 till the claimants has attained the age of i.e. 06.08.2011 was employed or worked anywhere, in this regard placed reliance on paragraph 13 of the evidence, filed by the workman, on affidavit, which has not been denied by the respondent.

Accordingly, Sri Vimal Kumar has requested that impugned order of termination may be set aside and the claimant may be awarded back wages and other consequential benefits.

Findings and conclusion:

I have heard learned counsel for parties and gone through record.

Workman/Sri Rajendra Prasad Sharma, was initially appointed on 19.07.1979 on the post of driver, posted in Indian Telephone Industries, Delhi Regional Office (hereinafter referred to as ITI).

On 14.09.1987 his services were confirmed, thereafter transferred to Bangalore and lastly by order dated 16.02.1999 transferred to RaiBareli, UP

While he was working at RaiBareli an official accommodation, allotted to him having Quarter No. H-838/840.

As per the case of the claimant his father who was suffering from lung cancer, residing at Delhi had fallen ill so he submitted an application, duly accepted by the concerned authority of ITI, granted three days' leave; accordingly, he proceeded to Delhi; however, due to illness of his father he was not able to join his duties after three days, and on 21.06.2000 reported for joining his duties. Thereafter, on 22.06.2000, he reported for duties an order/joining report was passed by the competent authority, on record as Ex-M-2 (list of documents filed on behalf of ITI, RaiBareli), reads as under:

> *"After unauthorized absence from duty w.e.f. 15.5.2010 Shri Rajendra rd., Staff No. 058354.Cat. D' has resumed his duties in Estt. Section on 22.6.2000 (F/N).*
>
> *He is directed to report to C(Sec. &Fire) for further instructions with advise not to repeat such type of act in future and if his stay at out side station is unavaridable he should timely inform the Company regarding the same."*

In pursuance to, order dated 22.06.2000 he was allowed to join his duties.

On 24.06.2000 workman received an information, that his wife had fallen ill so he proceeded to Delhi in order to attend his ailing wife, so, on 17.07.2000 when his wife recovered from illness, he reported for duties to Asstt. Personnel Officer (Establishment), submitted a letter to allow him to join his duty (Ex-M-5).

In response to said letter on 19.07.2000 Asstt. Personnel Officer (Establishment) wrote a letter to the concerned authority. But, he was not allowed to join his duties by the concerned authority in spite of best efforts made by him. The said fact was not contravened by the respondent by way of any cogent evidence.

On 19.08.2000, claimant received, impugned order of termination, passed by Asstt. Personnel Officer (Establishment), by which his services were terminated, reads as under:

"आईटीआई लिमिटेड, रायबरेली

सन्दर्भ संख्या ए/58354/डी 1373 A *दिनांक : 19.08.2000*

श्री राजेन्द्र प्रसाद शर्मा

पुत्र श्री रामसरन शर्मा

कर्मचारी संख्या: 058358

श्रेणी: 'डी'

विभागः अग्निशमन (सुरक्षा विभाग)

एच-838, 840-सेक्टर-द्वितीय

दूरभाष नगर, रायबरेली

आपके विभाग से यह सूचना प्राप्त हुई है कि आप दिनांक १४-६-२००० से बिना पूर्व सूचना और बिना अवकाश स्वीकृत कराये अपने कार्य स्थल से अनुपस्थित है। इस अनाधिकृत अनुपस्थिति के उपरान्त आपने दिनांक १७७-२००० को स्थापना अनुभाग में कार्यभार ग्रहण हेतु अनुमति प्राप्त करने के लिए प्रार्थना पत्र प्रस्तुत किया जिसके आधार पर आपको दिनांक १६-७-२००० से कार्यभार ग्रहण की अनुमति प्रदान करते हुए मुख्य प्रबन्धक (मन) के समक्ष अग्रिम आदेशों हेतु उपस्थित होने के लिए निर्देशित किया गया तथा आपको यह संजाल भी की गयी कि भविष्य में आप बिना पूर्व सूचना अवकाश संस्वीकृत कराये अपने कार्य स्थल से अनुपस्थित नहीं होंगे आप दिनांक १६-७-२००० को स्थापना अनुभाग से कार्यभार ग्रहण प्रतिवेदन प्रस्तुत करने के उपरान्त भी अपने कार्य स्थल नही पहुँचे और पुनः अनाधिकृत रूप से अनुपस्थित हैं। इस प्रकार आप दिनांक १४-६-२००० से निरन्तर अपने कार्य स्थल से बिना अवकाश स्वीकृत कराये अनुपस्थित हैं जो कि कम्पनी के स्थायी आदेशों की धारा १४.७ के अन्तर्गत अनुचित, अवैधानिक एवं अवांछनीय है।

कम्पनी के वरिष्ठ कर्मचारी होने के नाते आप यह भलीभांति जानते हैं कि कम्पनी के प्रमाणित स्थायी आदेशों की धारा ११.७ के अन्तर्गत यदि कोई कर्मचारी पन्द्रह दिन से अधिक समय तक अनुमति के जिला अनुपस्थित रहता है तो उसके सम्बन्ध में यह समझा जायेगा कि उसने स्वेच्छा से कम्पनी की पी और उसका परित्याग कर दिया है तथा उसने नोटिस दिए बिना कम्पनी से अपनी नौकरी स्वेक्षा से समाप्त कर दी है एवं सद्नुसार उसका नाम कम्पनीकी कर्मचारी सूची से काट दिया जायेगा।

आपके पूर्व आधरण एवं अभिलेखों के अवलोकन से यह स्पष्ट होता है कि आप इस प्रकार पूर्व प बार बिना पूर्व सूचना और अवकाश स्वीकृत कराये निम्नानुसार अपने कार्य स्थल से अनाधिकृत/ अवैतनिक

अनुपस्थित रह चुके हैं

माह	*दिन*
मार्च- 1999	*08*
अप्रैल - 1999	*05*
अक्टूबर - 1999	*06.4*
नवम्बर- 1999	*02.4*
मार्च -2000	*30*
अप्रैल-2000	*09*
मई -2000	*16.4*
जून-2000	*31*
जुलाई -2000	*18*
अगस्त-2000	
188-8-2000 तक	

आपके इस कदाचार से कम्पनी के कार्य पर विपरीत प्रभाव पड़ता है । आपको इस नोटिस आपके आवास पर इस कार्यालय के पत्र संख्या ५८६३४४/डी दिनांक ३१-७-२०० और आपसे इस सम्बन्ध में स्पष्टीकरण प्रस्तुत करने के लिए कहा गया किन्तु पत्र के इस कार्यालय को वापस कर दिया गया कि आप अपने स्थानीय आवास तथा मुख्यालय पर उपलब्ध नहीं हैं। आप इस पत्र के जारी होने की तिथि तक न तो स्वयं उपस्थित हुए और न ही इस सम्बन्ध में अपना कोई स्पष्टीकरण ही प्रस्तुत किया । अतः इन परिस्थितियों में कम्पनी के स्थायी आदेशों की पास ११.७ के अन्तर्गत आपका पनी की सेवा से पारणाधिकार(LIEN स्वतः समाप्त हो गया तथा स्थायी आदेशों के उत प्राविधान के अनुसार यह माना गया है कि आपने इस कम्पनी की सेवाओं का स्वेच्छा से परित्याग कर दिया है कम्पनी के किसी भी कार्य दिवस में आप सलग्न प्रारूप में अदेय प्रमाण पत्र प्रस्तुत कर अपनी समस्त बकाया राशि एवं अन्य देय यदि कोई हो, का भुगतान प्राप्त कर सकते हैं।

यह आदेश सक्षम अधिकारी के आदेशानुसार जारी किये जा रहे हैं।

संलग्नकः देयका की दो प्रतियां सहायक कार्मिक प्रबन्धक (स्थापना एवं नियुक्ति)"

As per the case of the claimant after receiving the said order, on inquiry it came to his knowledge that a show cause notice was issued to him on 31.07.2000; however, the same was not served or received by him on 31.07.2000, so, as the claimant has not submitted his reply to the show cause notice thereafter his services were terminated:

Show cause notice dated 31.07.2000 reads as under:

"आईटीआई लिमिटेड, रायबरेली

सन्दर्भ संख्या ए/58354/डी *दिनांक : 31.07.2000*

श्री राजेन्द्र प्रसाद शर्मा

पुत्र श्री रामसरन शर्मा

कर्मचारी संख्या: 058358

श्रेणी: 'डी'

विभागः अग्निशमन (सुरक्षा विभाग)

एच-838, 840-सेक्टर-द्वितीय

दूरभाष नगर, रायबरेली

कारण बताओ नोटिस

आपके विभाग से यह सूचना प्राप्त हुई है कि झाप दिनांक १४-६-२००० से बिना पूर्व सूचना और बिना अवकाश स्वीकृत कराये अपने कार्य स्थल से अनुपस्थित है। इस अनाधिकृत अनुपस्थिति के उपरान्त आपने दिनांक १७-७-२००० को स्थापना अनुभाग में कार्यभार ग्रहण अनुमति प्राप्त करने के लिए प्रार्थना पत्र प्रस्तुत किया जिसके आधार पर आपको दिनांक १६-५-२००० से कार्यभार ग्रहण की अनुमति प्रदान करते हुए मुख्य पानशमन के समक्ष अग्रिम आदेशों हेतु उपस्थित होने के लिए निर्देशित किया गया तथा आपको यह सलाह भी दी गयी कि भविष्य में आप बिना पूर्व सूचना या संस्वीकृत कराये अपने कार्य स्थल से अनुपस्थित नहीं होंगी जाप दिनांक -५-२००० को स्थापना अनुभाग से कार्यभार ग्रहण प्रतिवेदन प्राप्त कर लेने के उपरान्त भी अपने कार्य स्थल नहीं पहुँचे और पुनः अनलि रूप से अनुपस्थित है इस पुर आप दिनांक १४.६२000 से निरन्तर अपने कार्य स्थल से बिना अवकाश स्वीकृत अस्त है कि कम्पनी के स्थायी आदेशों के अन्तर्गत एवं गम्भीर कदाचार है।

कंपनी के वरिष्ठ कर्मचारी होने के नाते आप यह भलीभांति जानते हैं किमधिस्थापी आदेशों की धारा ११.७ के अन्तर्गत यदि कोई कर्मचारी पन्द्रह दिन से अधिक समय तक जनम के बिना अनुपस्थित रहता है तो उसके सम्बन्ध में यह समझा जायेगा कि उसने स्वेच्छा से कम्पनी की की छोड़ दी है और उसका परित्याग कर दिया है तथा उसने नोटिस दिए बिना कम्पनी से आपनी नौकरी स्वेच्छा से समाप्त कर दी है एवं तक कुमार उसका नाम कम्पनी की कर्मचारी सूची से काट दिया जायेगा आपके पूर्व आचरण एवं अभिलेने के अलोकन से यह स्पष्ट होता है कि आप इस प्रकार पूर्व में भी कई और बिना पूर्व सपना और स्वीकृत कराये अपने कार्य स्थल से अनुपस्थित रह चुके हैं। आपके इस कदाचार से कम्पनी के कार्य

पर विपरीत प्रभाव पडता है। अतः एतद्वारा आपको यह आदेश दिया जाता है कि इस मंत्र की प्राप्ति के तीन दिन के अन्दर उन सन्दर्भ में अपना लिखित स्पष्टीकरण प्रस्तुत करें कि क्यों न आपका नाम स्थायी आदेशों को धारा ११.७ के अन्तर्गत कम्पनी की कर्मचारी सूची से काट दिया जाये। यदि निर्धारित तिथि तक आपका स्पष्टीकरण नहीं होता है तो यह समझा जायेगा कि EL सम्बन्ध में आपको कुछ नहीं कहती है एवं तनुसार आपका नाम कम्पनी की कर्मचारी सूची से काट दिया जायेगा

प्रतिनिधित्

विभागप्रमुख को सूचनार्थ। सहायक कार्मिक प्रबंधक स्थापना"

Aggrieved by the order of termination dated 19.08.2000, claimant for redressal of his grievances, approached the Hon'ble High Court, Lucknow by filing Writ Petition No. 22 (SS) of 2000, dismissed by order dated 08.03.2006 that an alternative and efficacious remedy was available to him before the Labour Court. So, claimant filed Industrial dispute before the CGIT, New Delhi registered as ID case no. 13/2007.

Against registration of I.D case no. 13/2007, before CGIT, New Delhi, ITI, Rae Bareli flied a WP No. 4636 (MS) of 2007 before the Hon'ble High Court, Lucknow on the ground that the ID case no. 13/2007, field by the claimant was not maintainable on the ground of jurisdiction, allowed by order dated 11.04.2008 that CGIT, Delhi has no jurisdiction, thereafter claimant filed, present claim petition before CGIT, Lucknow registered as ID case on.64/2013.

During the pendency of the present adjudication case the claimant, attained age of superannuation, on 16.08.2011.

In view of the above said background, the core question to be considered that whether action on the part of the respondent thereby terminating the services of workman on the ground of unauthorized absence by order dated 19.08.2000 is contrary to the clause 11.7 of the Standing Order, or not?

In order to decide the controversy involved, it would be appropriate to have a glance on the following clauses of the Standing Order:

"11.7 .If an employee absents himself without leave for more than fifteen days or remains absent beyond the period of leave granted for more than fifteen days, he shall be considered as having voluntarily land abandoned the company's service and voluntarily terminated his employment with company without notice."

Clause 16: Procedure for Punishment, relevant clause 16 (a):

16 *(a) The Manager shall frame a charge sheet against the employee in writing setting out the allegations and the alleged misconduct. The employee shall be given an opportunity of explaining his conduct within a specified time limit.*

Clause 18: 'Termination of service by the Company':

18.1 The employment of any permanent employee may be terminated, if it is no longer required in the interest of the company by giving one month notice or by payment of wages at the basic rate of pay plus dearness allowance if any, for a like period in lieu of notice. Provided, always that no notice will be required where an employee is dismissed for misconduct after enquiry.

Reverting to the facts of the present case, as the per the case of the respondent, the workman was absent from his duties, without any sanctioned leave a show cause notice dated 31.07.2000 was sent to the workman's official residence, H-838/840, Doorbhash Nagar, Rae Bareli, available with the respondent through Ram Karan, process server on 01.08.2000 for service on claimant, but the same was not served on the workman as he was not present at his residence.

So the process server, Sri Ram Karan again went to the official residence of claimant to serve it as he was not available pasted the same on the door of house No. 840, allotted to the workman, in presence of one Sri Goldie Singh, S/o Sri Majid Singh, resident of Quarter No. 838, and submitted his report.

In spite of the said fact/service of notice, as per the case of respondent, claimant has not submitted his reply, to show cause notice, so, his services were terminated by order dated 19.08.2000 as per Clause 11.7 of the Standing Order.

Accordingly, the first point to be considered is "whether the service of show cause notice dated 31.07.2000 on claimant/workman is proper or not?"

From the pleadings as well as the documents filed on behalf of workman as well as evidence field by workman (examination-in-chief on 02.05.2018) and his cross-examination on 20.02.2020 the position which emerge out that he categorically stated that he has not received the show cause notice dated 31.07.2000; and the said fact was denied by respondent on the ground that show cause notice was pasted on the official accommodation allotted to him, so, the same is proper service of show cause notice, as claimant/\workman did not submit any reply to show cause notice, as such, impugned order has been passed.

In order to prove the service of show cause notice in addition to pleading and documents on behalf of the respondent one Sri Ramakant Tiwari, Asstt. Officer HR (SMNE), ITI, Rae Bareli has been produced as witness and evidence (examination-in-chief) was filed on 20.12.2020 and his cross-examination was done on 20.01.2021. In his cross-examination he has stated as under:

"Karmkaar ko vibhag ki taraf se aavasiya suvidha di gayi thi. Quarter colony mein allot kiya gaya tha. Karmkaar ko karan batao notice dinankit 31.7.2000 uske colony vale ghar ke pate par bheji gai thi. Yah notice chaspa ki gai ki karmkaar ko vyaktigat roop se ya uske parivaar ke sadasyon ko di hagi ya nahi yah mein nahi bata sakta.

Termination order mein agar notice ke vaapas aane ki baat likhi ho to mein nahi bata sakta. Shramik ko yah notice dinankit 31.7.2000 registered post dwara bheji gayi thi. Mujhe yah nahi pata ki vah registered notice karyalay mein vapas aayi thi ya nahi. Karkaar ke seva abhilekh mein uska sthai pata ankit tha. Mujhe vah pata yaad nahi lekin vo pata dilli ka tha. Main nishchit roop se nahi bata sakta ki sewa pustika ken karmkaar ka sthai para D-93, Anand Nikunj, nai dilli ankit hai. Yah sahih ai ki shramik ko notice dinak 31.7.2000 ya is sambandh mein koi aur notice uske sthai pate par bheji gai ye main nahi bata sakta"

In order to verify the service of show cause notice dated 31.07.2000 on the workman, original records were summoned by the Tribunal, produced by one Sri A.D. Joshi, Legal Officer, ITI, Rae Bareli.

After going through the record following order was passed on 22.12.2022, reproduced as under:

"22.12.2022

In pursuance to earlier order passed by this Tribunal Sri A.D. Joshi, Legal Officer, IT, Rae Bareilly has produced the original record.

Original records produced before the Tribunal have been perused.

And on the basis of material on record, Sri A.D. Joshi, Legal Officer, Rae Bareilly submits that show cause notice dated 31.07.2000 has been sent by way of Dasti Notice sent through Ram Karan on the residence, which was allotted to workman, R.P Sharma at Rae Bareilly i.e. quarter no. H-838-840 in an envelope; but workman was not available, so the same was returned back to the concerned authority after the endorsement on it by Sri Ram Karan (notice server). SA.D. Joshi further on the basis of documents on record submits, that thereafter the show cause notice was pasted on the door of house no. 840 allotted to the applicant in presence of one Sri Goldie Singh S/o Sri Majeed Singh who is resident of quarter no. 838. In this regard Sri Ram Karan submitted his report with the signature of Goldie Singh.

The photocopies of the said documents are taken on record.

Moreover, for adjudication/clarification of certain facts in order to decide the matter following questions have been asked by the Tribunal form Sri A.D. Joshi:-

(i) whether the show cause notice dated 31.07.2000 issued to the applicant was sent through registered post or not at his last known address of workman/claimant, registered with the company?

(ii) Whether the cause notice dated 31.07.2000 was displayed on the company's notice board?

(iii) At what date and time the cause notice dated 31.07.2000 was handed over to Ram Karan, peon, issued by Sahayak Karmik Prabandhak (Sthapna) to serve on the claimant?

(iv) On what date and time the show cause notice dated 31.07.2000, Ram Karna has served on claimant, and what report he has given when he found that door of House (H-838-840) were closed?

After going through record, Sri A.D. Joshi has given the answer to the above said questions as follows:

(i) On basis of record which are available with him today, the show cause notice dated 31.07.2000 was not sent to the claimant/workman through registered post or to last known address of workman/claimant, registered with the company.

(ii) Sri A.D. Joshi, after going through record, submits that there is no material available on record that the show cause notice dated 31.07.2000 was displayed on the Company's notice board, and the said fact is also not within his knowledge.

(iii) show cause notice dated 31.07.2000 was handed over to Ram Karan on 01.08.2000.

(iv) Sri A.D. Joshi submits that show cause notice was given to Ram Karan on 01.08.2000 and there is dispatch number 1198/1-8 on the envelop in which the show cause notice was send to the claimant. The said document is on record, paper no. 305 written that " 838-840 सेक्टर द्वितीय घर में ताला बंद था में कोई नहीं मिला है। 12-14 बजे तक ढूंढने पर नहीं मिला है।"

Needless to mention herein that if an employee who is working in a corporation and he is unauthorizedly absent then his services can be terminated as per clause 11.7 read with clause 34, on the following conditions which reads as under:

(a) Show cause is not served upon the employee if he is on leave or any other reason

(b) Copy shall be sent by registered post to his last known address, registered with the company

(c) Display at the notice board.

(d) Such posting of orders shall be considered to be good service in law or order etc. on the employee.

As per material on original record the show cause notice dated 31.07.2000, was initially sent by respondent through Sri Ram Karan, process server to serve it on claimant at his residence, allotted to him by the respondent i. e. House No. 838-840; but, he was not present. And there is a report in this regard by process server on the envelop in which the show cause notice dated 31.07.2000 was sent.

Thereafter, Sri Ram Karan, process server again went to serve the notice and pasted the same on the door of house no. 840, allotted to the workman, in the presence of one Sri Goldie Singh, S/o Majid Singh who was residing in the adjacent house, the house which was allotted to the workman.

From perusal of the original record, the position which emerged out is that there is noting by the process server on the envelop in which the show cause notice dated 31.07.2000 was given to him (Process server, Ram Karan) for service on 01.08.2000, that the claimant is not available in his official residence. Thereafter, as per the facts on record Sri Ram Karan again went to the official residence allotted to claimant to serve the same, as he was not available, so process pasted the show cause notice on the door of house no. 840, allotted to the claimant, in presence of one Sri Goldie Singh S/o Majid Singh and submitted his report. From record the admitted positon which emerged out that Sri Goldie Singh S/o Majid Singh in whose presence Ram Karan has pasted the notice, his statement was not recorded, whether the said act was done in his presence or not and without doing so, only on the statement of Ram Karan that he has pasted the notice on the house no. 840, it has been assumed by the respondent the said fact. Even Sri Ram Karan was also not examined prior to the passing of the impugned order, whether the report submitted by him is correct or not and he has pasted the show cause notice on the residence of claimant. So, in view of the said facts, it cannot be said that under law it can be presumed that show cause notice has been served on claimant.

Moreover, as per law the said procedure, adopted by the respondent is contrary to clause 34 of the Standing Order because as the said per clause 34 of the Standing Order, if the show cause notice is not served on the employee, if he is on leave than in that circumstance the same is required to be sent by registered post at his last known address, registered with the Company. The said act has not been done on one and on the other hand as per facts of the case, as stated hereinabove, the respondent has come up with a case that show cause notice was sent through process server, Ram Karan, the same cannot in any manner be said to a proper service as per the terms of clause 34 of the Standing Order on workman.

Moreover, from the perusal of original record, it is also clear that the show cause notice dated 31.07.2000 was not displayed on the notice board.

Further, as per the Standing Order, if a person who is willfully absent from his duties than in that circumstances the procedure, to be adopted by the ITI in regard to service of show cause notice procedure, as

per clause 3.4 of Standing Order was not followed, which is mandatory, thus, it was not a proper service of show cause notice on claimant by respondent.

Because if law provides that a particular thing has to be done in a particular manner than it has to be done in same manner not in otherwise. Hon'ble the Apex Court in the case of ***Opto Circuit India Ltd. v. Axis Bank and Ors. (2021) 6 SCC 707*** Hon'ble Supreme Court has held as under:

> *"15. This Court has time and again emphasised that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner alone and in no other manner. Among others, in a matter relating to the presentation of an Election Petition, as per the procedure prescribed under the Patna High Court Rules, this Court had an occasion to consider the Rules to find out as to what would be a valid presentation of an Election Petition in the case of Chandra Kishor Jha v. Mahavir Prasad and Ors. (1999) 8 SCC 266 and in the course of consideration observed as hereunder:*
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> > *It is a well settled salutary principle that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner.*
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> *Therefore, if the salutary principle is kept in perspective, in the instant case, though the Authorised Officer is vested with sufficient power; such power is circumscribed by a procedure laid down under the statute. As such the power is to be exercised in that manner alone, failing which it would fall foul of the requirement of complying due process under law. We have found fault with the Authorised Officer and declared the action bad only in so far as not following the legal requirement before and after freezing the account. This shall not be construed as an opinion expressed on the merit of the allegation or any other aspect relating to the matter and the action initiated against the Appellant and its Directors which is a matter to be taken note in appropriate proceedings if at all any issue is raised by the aggrieved party."*

Accordingly form the material on record as well as perusal of original record, the show cause notice dated 31.07.2000 was not served on workman as per Clause 34 of the Standing Order.

Next point to be considered that whether action on the part of respondent terminating the services of claimant by order dated 19.08.2000 on the ground absence without leave, on the basis of show cause notice dated 31.07.2000 is a valid exercise or not?

Law relating to unauthorized absence:

Termination from service cannot be automatic. Absence cannot be taken as bringing in an effect of termination automatically, even under the Service Rules. In ***Jai Shankar Versus State of Rajasthan, AIR 1966 SC 492***, the Hon'ble Supreme Court held that there can be no automatic termination for unauthorized absence, even if there be such a provision in the relevant Service Rules. The Court said that a removal is a removal and if it is punishment for over-staying one's leave, an opportunity must be given to the person against whom such an order is proposed, no matter how the Regulation describes it.

Long unauthorized absence of a confirmed employee does not lead to a presumption that the employee is no longer willing to service. His continued absence cannot be treated as resignation nor abandonment of service as there are positive activities and more than absence would require to constitute them. In ***Sukhoo Vs. Union of India, (1997) 35 ATC 283(All)***, it was held that there could be no automatic termination on account of absence from duty.

The Hon'ble Apex Court obtained support from its earlier decision in ***Syndicate Bank Vs. General Secretary, Syndicate Bank Staff Association, (2000) 5 SCC 65*** where the absenting employee was rightly held to have voluntarily retired and that the Bank could not be faulted for passing the order without any formal enquiry. The Hon'ble Supreme Court observed:

> *"In the present case action was taken by the Bank under Clause 16 of the Bipartite Settlement. It is not disputed that Dayanand absented himself from work for a period of 90 or more consecutive days. It was thereafter that the Bank served a notice on him calling upon him to report for duty within 30 days of the notice stating therein the grounds for the Bank to come to the conclusion that Dayanand had no intention to joining duties. Dayanand did not respond to the notice at all. On the expiry of the notice period the Bank passed orders that Dayanand had voluntarily retired from the service of Bank."*

On these facts the Hon'ble Supreme Court said that there was need for holding any enquiry before the order was passed. "*An enquiry would have been necessary if Dayanand had submitted his explanation which was not acceptable to the Bank or contended that he did report for duty but was no allowed to join by the Bank.*"

In the cases of ***Chander Bhan Vs. Union of India (1991) 2 ATJ 596 and Gurdip Singh Vs. Union of India (1991) 2 ATJ 627*** it has been held that in the case of ex parte proceedings at least the appellate order should contain the material showing reasons for the order of punishment. A removal order was made on ex parte proceedings and appellate authority rejected the appeal without narrating the facts or stating the grounds for rejection, the Tribunal quashed the order and directed reinstatement.

In the case of ***D.K. Yadav v. M/s J.M.A. Industries 1993 AIR SCW 1995*** Hon'ble Apex Court has held as under:

> *"14. In this case admittedly no opportunity was given to the appellant and no enquiry was held. The appellant's plea put forth at the earliest was that despite his reporting to duty on December 3, 1980 and on all subsequent days and readiness to join duty he was prevented to report to duty, nor he be permitted to sign the attendance register. The Tribunal did not record any conclusive finding in this behalf. It concluded that the management had power under Cl. (13) of the certified Standing Order to terminate with the service of the appellant. Therefore, we hold that the principles of natural justice must be read into the standing order No. 13(2)(iv). Otherwise it would become arbitrary, unjust and unfair violating Arts. 14. When so read the impugned action is violative of the principles of natural justice.*

In the case of ***Lakshmi Precision Screws Ltd v. Ram Bahagat AIR 2002 SC 2914***, Hon'ble the Supreme Court has held as under:

> *"14. While it is true that a later Three Judge Bench decision of this Court in Punjab and Sind Bank and Ors. v. Sakattar Singh (2001 (1) SCC 214) sounded a different note but the same should not detain us any further, since the factual context differs in material particulars and even the bi-partite settlement involved therein was of much accommodative in nature.*
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> *15.It is thus in this context one ought to read the doctrine of natural justice being an in-built requirement on the Standing Orders. Significantly, the facts depict that the respondent-workman remained absent from duty from 13th October 1990 and it is within a period of four days that a letter was sent to the workman informing him that since he was absenting himself from duty without authorised leave he was advised to report back within 48 hours and also to tender his explanation for his absence, otherwise his disinterestedness would thus be presumed. Is this in strict compliance with the Certified Standing Order - the answer possibly cannot be in the affirmative. Though however, if the letter dated 25th October, 1990 as noticed above is to be taken note of, then and in that event the same thus come within the ambit of the Certified Standing Order of 10 days' continued absence the situation however, is slightly different in the present context since the letter of 25th October is an intimation of his name being struck off the rolls of the company. It is an act; subsequent to the order of termination and if the letter of 17th October is an indication for such an order of termination the same does not come within the ambit of the Certified Standing Order. The High Court on this score stated as below:*
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> > *"Even if it presumed that the petitioner- management may have afforded an opportunity to the respondent-workman to tender his explanation and as such complied with the principles of natural justice in terms of the decision rendered by the Apex Court in Hindustan Paper Corporation_tm)s case (supra), yet the question remains, whether the determination of the petitioner management was arbitrary and without application of mind?"*
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> > ……..
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> > *In our considered view, the rejection of the claim of the respondent-workman is absolutely arbitrary and without consideration of the material placed on record by the respondent- workman (as discussed in the foregoing paragraph). The Labour Court examined in detail the factual position and returned a finding that the respondent-workman had not absented himself from service deliberately or intentionally and also that he had not abandoned. his service. It was further concluded that his absence was based on account of his illness which could be affirmed from the medical certificates produced by him. In the aforesaid view of the matter, in our considered view, the action of the petitioner-management in rejecting the representation of the respondent-*

workman dated 30.1.1991 was clearly arbitrary and as such it is not sustainable in law".

Hon'ble the Supreme Court in the case of ***Union of India & others vs. Dinanath Shantaram Karekar & others AIR 11998 SC 2722***, relevant para as under:

"10. Where the disciplinary proceedings are intended to be initiated by issuing a charge- sheet, its actual service is essential as the person to whom the charge-sheet is issued is required to submit his reply and, thereafter, to participate in the disciplinary proceedings. So also, when the show-cause notice is issued, the employee is called upon to submit his reply to the action proposed to be taken against him. Since in both the situations, the employee is given an opportunity to submit his reply, the theory of "Communication" cannot be invoked and "Actual Service" must be proved and established. It has already been found that neither the charge-sheet nor the show-cause notice were ever served upon the original respondent. Dinanath Shantaram Karekar. Consequently, the entire proceedings were vitiated."

Hon'ble the Supreme Court in case of ***M/s Scooters India Ltd vs. M. Mohammad Yaqub & another AIR 2002 SC 227*** has held as under:

"12. The question which then arises is whether the principles of natural justice were followed in this case. As has been set out hereinabove Mr. Swarup had submitted that the workman had been given an opportunity to join the duty and that he did not join duty even though repeatedly called upon to do so. t is contended that principles of natural justice have been complied with in this case. However, the material on record indicates otherwise. The Labour Court in its Award sets out and accepts the respondent's case that he had not been allowed to join duty. The respondent has given evidence that even though he personally met Chief Personnel Officer he was still not allowed to enter the premises. The evidence is that in spite of slip Ext. W.2, he was prevented from joining duty when he attempted to join duty. The slip Ext. W.2 had been signed by the Security Inspector of the Appellant. This showed that the Respondent had reported for work. As against this evidence the Appellant has not led any evidence to show that the workman had not reported for duty. Even though the slip Ex. W-2 had been proved by the workman, the Security Inspector, one Mr. Shukla, was not examined by the Appellant. Further the evidence of the Senior Time Keeper of the Appellant established that the workman had worked for more than 240 days within a period of 12 calendar months immediately preceding the date of termination of service. This was proved by a joint inspection report, which was marked as Ext. 45/A. It was on the basis of this material and this evidence that the Labour Court came to the conclusion that there was retrenchment without following the provisions of law. As the workman was not allowed to join duty, Standing Order 9.3.12 could not have been used for terminating his services."

And Hon'ble Supreme Court in case of ***Uptron India Ltd. vs. Shammi Bhan and another AIR 1998 SC 1681***, held as under:

"16. This Court in West Bengal State Electricity Board v. Desh Bandhu Ghosh, (1985) 3 SCC 116 (AIR 1985 SC 722) held that any provision in the Regulation enabling the management to terminate the services of a permanent employee by giving three months' notice or pay in lieu thereof, would be bad as violative of Article 14 of the Constitution. Such a Regulation was held to be capable of vicious discrimination and was also held to be naked 'hire and fire' rule. This view was reiterated in Central Inland Water Transport Corporation Ltd. v. Brojo Nath Ganguly, (1986) 3 SCC 156:(AIR 1986 SC 1571).

17. Again in O.P. Bhandari v. Indian Tourism Development Corporation Ltd., (1986) 4 SCC 337 (AIR 1987 SC 111), this Court held that Rule 31(v) of the Indian Tourism Development Corporation (Conduct, Discipline and Appeal) Rules, 1978, which provided that the services of a permanent employee could be terminated by giving him 90 days' notice or pay in lieu thereof, would be violative of Articles 14 and 16 of the Constitution.

18. The whole case law was reviewed by the Constitution Bench in Delhi Transport Corporation v. D.T.C. Mazdoor Congress, 1991 Supp (1) SCC 600 (AIR 1991 SC 101), and except the then Chief Justice Sabyasachi Mukharji, who dissented, the other 4 Judges reiterated the earlier view that the services of a confirmed employee could not be legally terminated by a simple notice.

……..

21. This Court in D. K. Yadav v. J.M.A. Industries Ltd., (1993) 3 SCC 259 (1993 AIR SCW 1995) has laid down that where the Rule provided that the services of an employee who overstays the leave would be treated to have been automatically terminated, would be bad as violative of Articles 14, 16 and 21 of the Constitution. It was further held that if any action was taken on the basis of such a rule without giving any opportunity of hearing to the employee, it would be wholly unjust, arbitrary and unfair. The Court reiterated and emphasised in no uncertain terms that principles of natural justice would have to be read into the provision relating to automatic termination of services."

In view of the facts stated, of the case, and the position of law on the point of unauthorised absence, impugned order dated 19.08.2000 by which the services of the workman, Rajendra Prasad Sharma was terminated is not in accordance with law (contrary to the clause 11.7 read with clause 34 of the Standing Order), same is liable to be set aside.

Another question to be considered in the present case is that if the workman service is terminated not in accordance with law (Standing Order), then whether the workman is entitled for back wages and other service benefits or not, keeping in view the fact that the workman during the pendency of the present adjudication case, before this Tribunal, attained age of retirement on 06.08.2011.

To decide the said point it will be appropriate to have a glance to the law as laid down by the Hon'ble Supreme Court in the case of ***Hind Construction & Engineering Co. Ltd. Vs. Their Workmen, AIR 1965 SC 917*** wherein it has been held that if order of punishment of dismissal for unauthorized absence is disproportionate, then was ordered to be reinstated with some other prejudice or penalty.

And Hon'ble Supreme Court in the case of ***A.P.S.R.T.C. Versus S. Narasagoud, (2003) SCC 212*** held that '*the employee having been held guilty of unauthorized absence from duty cannot claim the benefit notionally earned during the period merely because he has been directed to be reinstated with the benefit of continuity to service*'. The same view was adopted in the case of ***Uptron India Limited Vs. Shammi Bhan, (1998) 6 SCC 538*** wherein the Hon'ble Apex Court took into consideration the term of employment and came to the conclusion that termination on the strength of Certified Standing Orders would amount to "Retrenchment", entailing retrenchment benefits.

In ***Hind Construction & Engineering Co. Ltd. Vs. Their Workmen, AIR 1965 SC 917*** the Hon'ble Supreme Court held that when there is absenteeism on the part of the employee the best course would have been to warn and impose fine in the manner of treating the period as leave without pay, even if the employee had to his credit sufficient deposit of admissible kind of leave. The Court said that "*it is impossible to think that an employee would have been imposed under such circumstances, the extreme penalty of dismissal*."

In ***N. Hanumantha Vs. Union of India, 2007 (8) SLR 199 (HC) (MP)***, the Madhya Pradesh High Court noticed that the employee writ petitioner was removed from service on ground of unauthorized absence just for a month when the Service Rules for CRPF required a period of 60 days in unauthorized absence for the purposes of invoking the rule of desertion. Relying on Hon'ble the Apex Court decision in the case of ***Bhagwan Lal Arya Vs. Commissioner of Police, (2004) 4 SCC 560***, the High Court held removal from service was shockingly disproportionate and ordered reinstatement.

In ***Union of India Vs. Giriraj Sharma, 1995 SCC (L&S) 290***, the penalty of dismissal was imposed on account of overstaying the period of leave (12 days in this case). The High Court quashed the punishment and ordered reinstatement with all monetary and service benefits. But the State preferred an appeal where the Hon'ble Supreme Court held that in view of cogent explanation having been submitted by the employee the quantum of punishment was disproportionate and the High Court decision was modified to the extent that liberty to employer was given to impose a minor penalty, if they so desire. The same view was reiterated by the Hon'ble Supreme Court in ***Malkiat Singh Versus State of Punjab, (1996) 7 SCC 634*** wherein it was held that mere absence from duty could not be met with the extreme penalty of dismissal from service.

The Hon'ble Supreme Court in case of ***H. S. Arora Versus Union of India, 1998 SCC (L&S) 172, Hind Construction & Engineering Co. Ltd. Vs. Their Workmen, AIR 1965 SC 917 & Malkiat Singh Versus State of Punjab, (1996) 7 SCC 634*** held that dismissal on account unauthorized absence simpliciter was disproportionate and ordered for lesser penalty.

A Full Bench of CAT in ***K. L. Gulati Versus Union of India (Bahri Bros.'Full Bench Judgments, Vol.III, P.367)*** held:

"…… when there is no allegation of misconduct involving moral turpitude or any charge of corruption or of suspected doubtful integrity on the part of the applicant the quantum of punishment of removal from service appears to be wholly disproportionate."

Hon'ble the Supreme Court in case of ***M/s Hindustan Tin Works Pvt. Ltd. vs. The Employees of M/s Hindustan Tin Works Pvt. Ltd. & others AIR 1979 SC 75***, has held as under:

"7. The question in controversy which fairly often is raised in this Court is whether even where reinstatement is found to be an appropriate relief, what should be the guiding considerations for awarding full or partial back wages. This question is neither new nor raised for the first time. It crops up every time when the workman questions the validity and legality of termination of his service howsoever brought about, to wit, by dismissal, removal, discharge or retrenchment, and the relief of reinstatement is granted. As a necessary corollary the question immediately is raised as to whether the workman should be awarded full back wages or some sacrifice is expected of him.

8. Let us steer clear of one controversy whether where termination of service is found to be invalid, reinstatement as a matter of course should be awarded or compensation would be an adequate relief. That question does not arise in this appeal. Here the relief of reinstatement has been granted and the award has been implemented and the retrenched workmen have been reinstated in service. The only limited question is whether the Labour Court in the facts and circumstances of this case was justified in awarding full back wages.

9. It is no more open to debate that in the field of industrial jurisprudence a declaration can be given that the termination of service is bad and the workman continues to be in service. The specter of common law doctrine that contract of personal service cannot be specifically enforced or the doctrine of mitigation of damages does not haunt in this branch of law. The relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings.

If thus the employer is found to be in the wrong as a result of "which the workman is directed to be reinstated, the employer could not shirk his responsibility of paying the wages which the workman has been deprived of by the illegal or invalid action of the employer. Speaking realistically, where termination of service is questioned as invalid or illegal and the workman has to go through the gamut of litigation, his capacity to sustain himself throughout the protracted litigation is itself such an awesome factor that he may not survive to see the day when relief is granted. More so in our system where the law's proverbial delay has become stupefying. If after such a protracted time and energy consuming litigation during which period the workman just sustains himself, ultimately he is to be told that though he will be reinstated, he will be denied the back wages which would be due to him, the workman would be subjected to a sort of penalty for no fault of his and it is wholly undeserved. Ordinarily, therefore, a workman whose service has been illegally terminated would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness.

That is the normal rule. Any other view would be a premium on the unwarranted litigating activity of the employer. If the employer terminates the service illegally and the termination is motivated as in this case, viz., to resist the workman's demand for revision of wages the termination may well amount to unfair labour practice. In such circumstances reinstatement being the normal rule, it should be followed with full back wages. Articles 41 and 43 of the Constitution would assist us in reaching a just conclusion in this respect. By a suitable legislation, to wit, the U.P. Industrial Disputes Act, 1947, the State has endeavoured to secure work to the workmen. In breach of the statutory obligation the services were terminated and the termination is found to be invalid; the workmen though willing to do the assigned work and earn their livelihood, were kept away therefrom. On top of it they were forced to litigation upto the apex Court and now they are being told that something less than full back wages should be awarded to them. If the services were not terminated the workmen ordinarily would have continued to work and would have earned their wages. When it was held that the termination of services was neither proper nor justified, it would not only show that the workmen were always willing to serve but if they rendered service they would legitimately be entitled to the wages for the same. If the workmen were always ready to work but they were kept away therefrom on account of invalid act of the employer, there is no justification for not awarding them full back wages which were very legitimately due to them. A Division Bench of the Gujarat High Court in Dhari Gram Panchayat v. Safai Kamdar Mandal MANU/GJ/0120/1970 , and a Division Bench of the Allahabad High Court in Postal Seals Industrial Co-operative Society Ltd. v. Labour

Court II, Lucknow and Ors. [1971] 1 L.L.J 327, have taken this view and we are of the opinion that the view taken therein is correct.

10. The view taken by us gets support from the decision of this Court in Workmen of Calcutta Dock Labour Board and Anr. v. Employers in relation to Calcutta Dock Labour Board and Ors. (1973)IILLJ254SC . In this case seven workmen had been detained under the Defence of India Rules and one of the disputes was that when they were released and reported for duty, they were not taken in service and the demand was for their reinstatement. The Tribunal directed reinstatement of five out of seven workmen and this part of the Award was challenged before this Court. this Court held that the workmen concerned did not have any opportunity of explaining why their services should not be terminated and, therefore, reinstatement was held to be the appropriate relief and set aside the order of the Tribunal. It was observed that there was no justification for not awarding full back wages from the day they offered to resume work till their reinstatement. Almost an identical view was taken in Management of Panitole Tea Estate v. The Workmen (1971)ILLJ233SC .

11. In the very nature of things there cannot be a straight jacket formula for awarding relief of back wages. All relevant considerations will enter the verdict. More or less, it would be a motion addressed to the discretion of the Tribunal. Full back wages would be the normal rule and the party objecting to it must establish the circumstances necessitating departure. At that stage the Tribunal will exercise its discretion keeping in view all the relevant circumstances. But the discretion must be exercised in a judicial and judicious manner. The reason for exercising discretion must be cogent and convincing and must appear on the face of the record. When it is said that something is to be done within the discretion of the authority, that something is to be done according to the rules of reason and justice, according to law and not humour. It is not to be arbitrary, vague and fanciful but legal and regular (See Susannah Sharn v. Wakefield [1891] AC 173.

12. It was, however, very strenuously contended that as the appellant company is suffering loss and its carry-forward loss as on 31st March 1978 is Rs. 8,12,416.90, in order to see that the industry survives and the workmen continue to get employment, there must be some sacrifice on the part of workmen. If the normal rule in a case like this is to award full back wages, the burden will be on the appellant employer to establish circumstances which would permit a departure from the normal rule. To substantiate the contention that this is an exceptional case for departing from the normal rule it was stated that loss is mounting up and if the appellant is called upon to pay full back wages in the aggregate amount of Rs. 2,80,000/-, it would shake the financial viability of the company and the burden would be unbearable. More often when some monetary claim by the workmen is being examined, this financial inability of the company consequent upon the demand being granted is voiced. Now, undoubtedly an industry is a common venture, the participants being the capital and the labour. Gone are the days when labour was considered a factor of production. Article 43A of the Constitution requires the State to take steps to secure the participation of workmen in the management of the undertaking, establishments or other organisations engaged in any industry. Thus, from being a factor of production the labour has become a partner in industry. It is a common venture in the pursuit of desired goal.

13. Now, if a sacrifice is necessary in the overall interest of the industry or a particular undertaking, it would be both unfair and iniquitous to expect only one partner of the industry to make the sacrifice. Pragmatism compels common sacrifice on the part of both. The sacrifice must come from both the partners and we need not state the obvious that the labour is a weaker partner who is more often called upon to make the sacrifice. Sacrifice for the survival of an industrial undertaking cannot be an unilateral action. It must be a two way traffic. The management need not have merry time to itself making the workmen the sacrificial goat. If sacrifice is necessary, those who can afford and have the cushion and the capacity must bear the greater brunt making the shock of sacrifice as less poignant as possible for those who keep body and soul together with utmost difficulty."

In case of ***Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) AIR 2014 SC (Supp) 121***, Hon'ble the Supreme Court has held as under:

"this Court in Syed Yakoob v. K.S. Radhakrishnan MANU/SC/0184/1963 : AIR 1964 SC 477. Payment of back wages having a discretionary element involved in it has to be dealt with, in the

facts and circumstances of each case and no straight-jacket formula can be evolved, though, however, there is statutory sanction to direct payment of back wages in its entirety. As regards the decision of this Court in Hindustan Tin Works (P) Ltd. be it noted that though broad guidelines, as regards payment of back wages, have been laid down by this Court but having regard to the peculiar facts of the matter, this Court directed payment of 75% back wages only.

The issue as raised in the matter of back wages has been dealt with by the Labour Court in the manner as above having regard to the facts and circumstances of the matter in the issue, upon exercise of its discretion and obviously in a manner which cannot but be judicious in nature. In the event, however, the High Court's interference is sought for, there exists an obligation on the part of the High Court to record in the judgment, the reasoning before however denouncing a judgment of an inferior Tribunal, in the absence of which, the judgment in our view cannot stand the scrutiny of otherwise being reasonable. There ought to be available in the judgment itself a finding about the perversity or the erroneous approach of the Labour Court and it is only upon recording therewith the High Court has the authority to interfere. Unfortunately, the High Court did not feel it expedient to record any reason far less any appreciable reason before denouncing the judgment.

21. The aforesaid judgment became a benchmark for almost all the subsequent judgments. In Hindustan Motors Ltd. v. Tapan Kumar Bhattacharya (2002) 6 SCC 41, the Fifth Industrial Tribunal, West Bengal had found that the finding of guilty recorded in the departmental inquiry was not based on any cogent and reliable evidence and passed an award for reinstatement of the workman with other benefits. The learned Single Judge allowed the writ petition filed by the employer and quashed the award of the Industrial Tribunal. The Division Bench of the High Court reversed the order of the learned Single Judge. This Court issued notice to the Respondent limited to the question of back wages. After taking cognizance of the judgments in Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited (supra) and P.G.I. of Medical Education & Research, Chandigarh v. Raj Kumar (supra), the Court observed:

> *"As already noted, there was no application of mind to the question of back wages by the Labour Court. There was no pleading or evidence whatsoever on the aspect whether the Respondent was employed elsewhere during this long interregnum. Instead of remitting the matter to the Labour Court or the High Court for fresh consideration at this distance of time, we feel that the issue relating to payment of back wages should be settled finally. On consideration of the entire matter in the light of the observations referred to supra in the matter of awarding back wages, we are of the view that in the context of the facts of this particular case including the vicissitudes of long-drawn litigation, it will serve the ends of justice if the Respondent is paid 50% of the back wages till the date of reinstatement. The amount already paid as wages or subsistence allowance during the pendency of the various proceedings shall be deducted from the back wages now directed to be paid. The Appellant will calculate the amount of back wages as directed herein and pay the same to the Respondent within three months, failing which the amount will carry interest at the rate of 9% per annum. The award of the Labour Court which has been confirmed by the Division Bench of the High Court stands modified to this extent. The appeal is disposed of on the above terms. There will be no order as to costs."*
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> *(Emphasis supplied)*

22. In Indian Railway Construction Company Ltd. v. Ajay Kumar (2003) 4 SCC 579, this Court was called upon to consider whether the services of the Respondent could be terminated by dispensing with the requirement of inquiry enshrined in Indian Railway Construction Company Ltd. (Conduct, Discipline and Appeal) Rules, 1981 read with Article 311(2) of the Constitution. The learned Single Judge of the Delhi High Court held that there was no legal justification to dispense with the inquiry and ordered reinstatement of the workman with back wages. The Division Bench upheld the order of the learned Single Judge. The two Judge Bench of this Court referred to the judgments in Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited (supra) and P.G.I. of Medical Education & Research, Chandigarh v. Raj Kumar (supra) and held that payment of Rs. 15 lakhs in full and final settlement of all claims of the employee will serve the ends of justice.

23. In M.P. State Electricity Board v. Jarina Bee (Smt.) (supra), the two Judge Bench referred to P.G.I. of Medical Education & Research, Chandigarh v. Raj Kumar (supra) and held that it is

always incumbent upon the Labour Court to decide the question relating to quantum of back wages by considering the evidence produced by the parties.

24. In Kendriya Vidyalaya Sangathan v. S.C. Sharma (supra), the Court found that the services of the Respondent had been terminated under Rule 19(ii) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 on the charge that he was absconding from duty. The Central Administrative Tribunal held that no material was available with the disciplinary authority which could justify invoking of Rule 19(ii) and the order of dismissal could not have been passed without holding regular inquiry in accordance with the procedure prescribed under the Rules. The Division Bench of the Punjab and Haryana High Court did not accept the Appellants' contention that invoking of Rule 19(ii) was justified merely because the Respondent did not respond to the notices issued to him and did not offer any explanation for his willful absence from duty for more than two years. The High Court agreed with the Tribunal and dismissed the writ petition. The High Court further held that even though the Respondent-employee had not pleaded or produced any evidence that after dismissal from service, he was not gainfully employed, back wages cannot be denied to him. This Court relied upon some of the earlier judgments and held that in view of the Respondent's failure to discharge the initial burden to show that he was not gainfully employed, there was ample justification to deny him back wages, more so because he had absconded from duty for a long period of two years.

25. In General Manager, Haryana Roadways v. Rudhan Singh (2005) 5 SCC 591, the three Judge Bench considered the question whether back wages should be awarded to the workman in each and every case of illegal retrenchment. The factual matrix of that case was that after finding the termination of the Respondent's service as illegal, the Industrial Tribunal-cum-Labour Court awarded 50% back wages. The writ petition filed by the Appellant was dismissed by the Punjab and Haryana High Court. This Court set aside award of 50% back wages on the ground that the workman had raised the dispute after a gap of 2 years and 6 months and the Government had made reference after 8 months. The Court then proceeded to observe:

> *"There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment i.e. whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment, namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. One of the important factors, which has to be taken into consideration, is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at his age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. Another important factor, which requires to be taken into consideration is the nature of employment. A regular service of permanent character cannot be compared to short or intermittent daily-wage employment though it may be for 240 days in a calendar year."*

26. In U.P. State Brassware Corporation Ltd. v. Uday Narain Pandey (supra), the two Judge Bench observed:

> *"No precise formula can be laid down as to under what circumstances payment of entire back wages should be allowed. Indisputably, it depends upon the facts and circumstances of each case. It would, however, not be correct to contend that it is automatic. It should not be granted mechanically only because on technical grounds or otherwise an order of termination is found to be in contravention of the provisions of Section 6N of the U.P. Industrial Disputes Act."*

27. The Court also reiterated the rule that the workman is required to plead and prima facie prove that he was not gainfully employed during the intervening period.

28. In Depot Manager, Andhra Pradesh State Road Transport Corporation v. P. Jayaram Reddy (supra), this Court noted that the services of the Respondent were terminated because while

seeking fresh appointment, he had suppressed the facts relating to earlier termination on the charges of grave misconduct. The Labour Court did not find any fault with the procedure adopted by the employer but opined that dismissal was very harsh, disproportionate and unjustified and accordingly exercised power Under Section 11-A of the Industrial Disputes Act, 1947 for ordering reinstatement with back wages. This Court referred to the judgments in P.G.I. of Medical Education & Research, Chandigarh v. Raj Kumar (supra) and J.K. Synthetics Ltd. v. K.P. Agrawal (supra) and held that the Labour Court was not justified in awarding back wages.

29. In Novartis India Limited v. State of West Bengal (supra), the services of the workman were terminated on the charge of not joining the place of transfer. The Labour Court quashed the termination of services on the ground of violation of the rules of natural justice and passed an award of reinstatement of the workman with back wages. The learned Single Judge of the High Court dismissed the writ petition filed by the Appellant but the letters patent appeal was allowed by the Division Bench on the ground that the State of West Bengal was not the appropriate Government for making the reference. The special leave petition filed by the workman was allowed by this Court and the Division Bench of the High Court was asked to decide the letters patent appeal on merits. In the second round, the Division Bench dismissed the appeal. This Court referred to shift in the approach regarding payment of back wages and observed:

> *"There can, however, be no doubt whatsoever that there has been a shift in the approach of this Court in regard to payment of back wages. Back wages cannot be granted almost automatically upon setting aside an order of termination inter alia on the premise that the burden to show that the workman was gainfully employed during interregnum period was on the employer. This Court, in a number of decisions opined that grant of back wages is not automatic. The burden of proof that he remained unemployed would be on the workmen keeping in view the provisions contained in Section 106 of the Evidence Act, 1872. This Court in the matter of grant of back wages has laid down certain guidelines stating that therefor several factors are required to be considered including the nature of appointment; the mode of recruitment; the length of service; and whether the appointment was in consonance with Articles 14 and 16 of the Constitution of India in cases of public employment, etc.*
>
> *It is also trite that for the purpose of grant of back wages, conduct of the workman concerned also plays a vital role. Each decision, as regards grant of back wages or the quantum thereof, would, therefore, depend on the fact of each case. Back wages are ordinarily to be granted, keeping in view the principles of grant of damages in mind. It cannot be claimed as a matter of right."*

Hon'ble in the case of ***Buvnesh Kumar Dwivedi v. M/s Hindalco Industreis Ltd. AIR 2014 SC 2258***, has held as under:

"30. On the issue of back wages to be awarded in favour of the Appellant, it has been held by this Court in the case of Shiv Nandan Mahto v. State of Bihar and Ors. MANU/SC/0730/2013 : (2013) 11 SCC 626 that if a workman is kept out of service due to the fault or mistake of the establishment/company he was working in, then the workman is entitled to full back wages for the period he was illegally kept out of service. The relevant paragraph of the judgment reads as under:

> *"5. ...In fact, a perusal of the aforesaid short order passed by the Division Bench would clearly show that the High Court had not even acquainted itself with the fact that the Appellant was kept out of service due to a mistake. He was not kept out of service on account of suspension, as wrongly recorded by the High Court. The conclusion is, therefore, obvious that the Appellant could not have been denied the benefit of back wages on the ground that he had not worked for the period when he was illegally kept out of service. In our opinion, the Appellant was entitled to be paid full back wages for the period he was kept out of service.*

Hon'ble Madras High Court in case of ***Salim Ali Centre for Ornithology and Natural History, Coimbatore & Anr. vs. Mathew K. Sebastian AIR Online 2021 Mad 1827***, held as under:

"8. A Division Bench of this Court in S.Sivaraj V. The Managing Director, Tamil Nadu Forest Plantation Corporation Limited, 2007 (5) CTC 579, held as follows:

"9. In fact the Supreme Court has considered the entitlement of an employee for backwages when the order of dismissal is set aside in the decision in Banshi Dhar V. State of Rajasthan and another, 2007 (1) SCC 324 (AIROnline 2006 SC 542), wherein the Supreme Court observed that no hard and fast rule can be laid down in regard to the grant of backwages and each case has to be determined on its own facts. In the decision in Muir Mills Unit of NTC (U.P.) Ltd. v. Swayam Prakash Srivastava and another, 2007 (1) SCC 491 (AIR 2007 SC 519), the Supreme Court has reiterated the same law by holding that the payment of full backwages is not a natural consequence of setting aside an order of termination of services.

10. It is not a rule of thumb that in every case where reinstatement is ordered, the payment of backwages is a natural consequence. It depends on the facts of each case. On the facts and circumstances of this case, we are of the considered view that the termination which was set aside by this Court is purely on the ground of procedural irregularity and such order will not confer an automatic right for the appellant to draw backwages."

Hon'ble Apex Court in the case of ***P.V.K. Distillery Limited vs. Mahendra Ram (2009) 2 SCC (L&S) 134***, has held as under:

"14. In the case of P.G.I. of M.E. and Research, Chandigarh v. Raj Kumar MANU/SC/0829/2000 : 2000(8)SCALE469 , this Court has held that:

"12. Payment of back wages having a discretionary element involved in it, has to be dealt with, in the facts and circumstances of each case and no straight-jacket formula can be evolved, though, however, there is statutory sanction to direct payment of back wages in its entirety."

15. The issue as raised in the matter of back wages has been dealt with by the Labour Court in the manner as above having regard to the facts and circumstances of the matter in the issue, upon exercise of its discretion and obviously in a manner which cannot but be judicious in nature. There exists an obligation on the part of the High Court to record in the judgment, the reasoning before however denouncing a judgment of an inferior Tribunal, in the absence of which, the judgment in our view cannot stand the scrutiny of otherwise being reasonable.

16. In the case of Hindustan Motors v. T.K. Bhattacharya MANU/SC/0584/2002 : (2002)IILLJ1156SC , this Court has stated that Section 11A as amended in 1971, is couched in wide and comprehensive terms. It vests a wide discretion in the Tribunal in the matter of awarding proper punishment and also in the matter of the terms and conditions on which reinstatement of the workman should be ordered. It necessarily follows, that, the Tribunal is duty-bound to consider whether in the circumstances of the case, back wages have to be awarded and if so, to what extent. Court then held that:

"Industrial Tribunal and Division Bench of High Court erred in proceeding on the assumption that quashment of dismissal order should be followed by reinstatement with full back wages as a matter of course.

16. .....On consideration of the entire matter in the light of the observations referred to supra in the matter of awarding back wages, we are of the view that in the context of the facts of this particular case including the vicissitudes of long-drawn litigation, it will serve the ends of justice if the respondent is paid 50% of the back wages till the date of reinstatement."

17. In U.P. State Brassware Corp. Ltd. v. Uday Narain Pandey MANU/SC/2321/2005 : (2006)ILLJ496SC , it is observed that:

> *"A person is not entitled to get something only because it would be lawful to do so. If that principle is applied, the functions of an Industrial Court shall lose much of their significance."*

18. Although direction to pay full back wages on a declaration that the order of termination was invalid used to be the usual result but now, with the passage of time, a pragmatic view of the matter is being taken by the court realizing that an industry may not be compelled to pay to the workman for the period during which he apparently contributed little or nothing at all to it and/or for a period that was spent unproductively as a result whereof the employer would be

compelled to go back to a situation which prevailed many years ago, namely, when the workman was retrenched.

19. In the case of Haryana Urban Development Authority v. Om Pal MANU/SC/7290/2007 : (2007)2LLJ1030SC , it is stated that:

> *"7. ……. it is now also well-settled that despite a wide discretionary power conferred upon the Industrial Courts under Section 11A of the 1947 Act, the relief of reinstatement with full backwages should not be granted automatically only because it would be lawful to do so. Grant of relief would depend on the fact situation obtaining in each case. It will depend upon several factors; one of which would be as to whether the recruitment was effected in terms of the statutory provisions operating in the field, if any."*

20. In deciding the question, as to whether the employee should be recompensed with full back wages and other benefits until the date of reinstatement, the tribunals and the courts have to be realistic albeit the ordinary rule of full back wages on reinstatement. [Western India Match Co. Ltd. v. Third Industrial Tribunal, West Bengal (1978)ILLJ206SC .]

21. In Hindustan Tin Works (P) Ltd. v. Employees MANU/SC/0272/1978 : (1978)IILLJ474SC , this Court has held that:

> *"9. ……..The relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It, therefore, does not lay down a law in absolute terms to the effect that the right to claim back wages must necessarily follow an order declaring that the termination of service is invalid in law."*

22. In the case of Surendra Kumar Verma v. Central Govt. Industrial Tribunal-cum-Labour Court MANU/SC/0316/1980 : (1981)ILLJ386SC , this Court has observed that:

> *"6…….Plain common sense dictates that the removal of an order terminating the services of workmen must ordinarily lead to the reinstatement of the services of the workmen. It is as if the order has never been, and so it must ordinarily lead to back wages too. But there may be exceptional circumstances which make it impossible or wholly inequitable vis-à-vis the employer and workmen to direct reinstatement with full back wages. For instance, the industry might have closed down or might be in severe financial doldrums; the workmen concerned might have secured better or other employment elsewhere and so on. In such situations, there is a vestige of discretion left in the court to make appropriate consequential orders. The court may deny the relief of reinstatement where reinstatement is impossible because the industry has closed down. The court may deny the relief of award of full back wages where that would place an impossible burden on the employer. In such and other exceptional cases the court may mould the relief."*

23.In Allahabad Jal Sansthan v. Daya Shankar Rai MANU/SC/0349/2005 : (2005)IILLJ847SC , this Court has observed:

> *"6. A law in absolute terms cannot be laid down as to in which cases, and under what circumstances, full back wages can be granted or denied. The Labour Court and/or Industrial Tribunal before which industrial dispute has been raised, would be entitled to grant the relief having regard to the facts and circumstances of each case. For the said purpose, several factors are required to be taken into consideration.*

24. In Madurantakam Coop. Sugar Mills Ltd. v. S. Viswanathan MANU/SC/0139/2005 : (2005)IILLJ1SC , the quantum of back wages was confined to 50%, stating:

> *"19……..It is an undisputed fact that the workman had since attained the age of superannuation and the question of reinstatement does not arise. Because of the award, the respondent workman will be entitled to his retiral benefits like gratuity, etc. and accepting the statement of the learned Senior Counsel for the appellant Mills that it is undergoing a financial crisis, on the facts of this case we think it appropriate that the full back wages granted by the Labour Court be reduced to 50% of the back wages."*

25. In the instant case, the notice had been issued limiting the question to the payment of 50% of the total back wages. This does not mean that the respondent is not entitled to further relief. The point that his services were terminated in the year 1985 and since then the case is pending for

the last two decades in different courts also has no relevance, since he had approached the court within a reasonable time. It is not his fault that the case is still pending before the court. These grounds could not be held against him for denying the relief of back wages otherwise he would suffer double jeopardy of losing back wages and delay in getting the reinstatement for no fault of his. Therefore, it would have been more enlightening, had the High Court reasoned out as to why the appellant should reinstate the respondent with full employment benefits and should pay full back wages to him for nothing in return from him in terms of work, production etc.

26. Giving a realistic approach to the matter and in spite of all these circumstances we are restricting ourselves to the question of 50% of the total back wages.

27. Although services of the respondent have been terminated unjustifiably and illegally, it itself does not create a right of reinstatement with full employment benefits and full back wages."

Taking into consideration the above judgments, on the point of back wages, in nutshell it cannot be said that it is not rule of thumb that in every case where reinstatement is ordered the payment of back wages is natural consequence, it depends upon the facts of each case.

Reverting to the facts of present case, taking into consideration the above said facts and the workman was not engaged/gainfully employed from the date of his termination i.e. 19.08.2000 till the date he attained the age of superannuation i.e. 16.08.2011, not disputed by the respondent so, the interest of justice would subserve if he may be given 50% (Fifty percent) of the back wages from the date of termination (19.08.2000) to the date of retirement (16.08.2011) and after his superannuation, other consequential benefits for which he is entitled.

AWARD

For the foregoing reasons impugned order dated 19.08.2000 is set aside and the shall pay 50% (Fifty percent) of back wages from the date of his termination till the date of retirement (16.08.2011) and after his superannuation claimant is also entitled for consequential/retrial benefits as per Rules/Standing Order, within two months from receipt of copy of this award.

Justice ANIL KUMAR, Presiding Officer

नई दिल्ली, 4 मई, 2023

का.आ. 746.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महाप्रबंधक, हिंदुस्तान एयरोनॉटिक्स लिमिटेड, लखनऊ; मैसर्स शाह बंधु, द्वारा श्री योगेंद्र प्रसाद शाह, स्वच्छता ठेकेदार, हरजेंद्र नगर, कानपुर ; मैसर्स ग्रुप-4 फैसिलिटी सर्विस, द्वारा श्री नवल कपूर, निदेशक कार्मिक, 1/97, विद्युत खंड, गोमती नगर, लखनऊ, के प्रबंधतंत्र के संबद्ध नियोजकों और श्री गया प्रसाद, कामगार,के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ सं. 74/2011) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 4/05/2023 को प्राप्त हुआ था।

[सं. एल-42025-07-2023-79- आई आर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 4th May, 2023

S.O. 746.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 74/2011) of the Central Government Industrial Tribunal cum Labour Court–Lucknow, as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, Hindustan Aeronautics Limited, Lucknow ;M/s Shah Bandhu, through Shri Yogendra Prasad Shah,Sanitation Contractor, Harjendra Nagar, Kanpur ; M/s Group -4 Facilities Service, through Shri Nawal Kapoor, Director Personnel, 1/97, Vidyut Khand, Gomti Nagar, Lucknow, and Shri Gaya Prasad, Worker, which was received along with soft copy of the award by the Central Government on 04/05/2023.

[No. L- 42025-07-2023-79- IR(DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT

LUCKNOW

Present: Justice ANIL KUMAR, Presiding Officer

I.D. No. 74/2011

BETWEEN

Gaya Prasad, son of Late Badalu, Resident of Village Samuddipur.
Post Gazipur, B Block, Indira Nagar, Lucknow.

AND

1. Hindustan Aeronautics Limited, Lucknow Division, Lucknow through its General Manager.
2. General Manager, Hindustan Aeronautics Limited, Lucknow Division, Lucknow.
3. M/s Shah Bandhu, through Sri Yogendra Prasad Shah,
   Sanitation Contractor, 504, Viman Nagar, G.T. Road.
   Harjendra Nagar, Kanpur.
4. M/s Group -4 Facilities Service, through Sri Nawal Kapoor,
   Director Personnel, 1/97, Vidyut Khand, Gomti Nagar, Lucknow.

AWARD

On 28.02.2010 the claimant/workman has field the ID case No. 72/2011 as per the provisions of Section 2A (2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act).

Facts of the case:

Hindustan Aeronautics Limited, Lucknow Division (hereinafter referred to as Establishment), is a factory registered under the provisions of the Factories Act, which is situated at Faizabad Road, Lucknow and the sanitation work of the premises of the Establishment as well as Plant and Machinery installed at the factory premises is a perennial as well regular nature of job.

Establishment is an Engineering Industry and the Government has issued a notification dated 24.04.1990 under Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 after the recommendation of Contract Labour Advisory Board, whereby 18 works of the Engineering Industry, which are regular or perennial in nature has been prohibited.

However, it was the prevalent practice in establishment that they employed the contract labour for sanitation work of the establishment/premises despite the fact that the sanitation work was regular in nature; and the claimant/workman was working in the establishment right from the very beginning i.e. from the date, the factory was established and continuously worked till the date of termination i.e. 21.12.2001.

As per the case workman order of termination dated 21.12.2001 by which his services in an illegal and unjustified manner was terminated, inasmuch as in establishment of the employers there were more than 100 workmen employed as such the compliance of Section 25-N of the Industrial Disputes Act was necessary but before terminating the services of the workmen, the employers have not complied with the provisions of Section 25-N of the Industrial Disputes Act.

Further, the services of the workman have been terminated by the principal employer not by the contractor and the work which were being performed by the concerned workman still exist with employers and the same is being carried out by employing new workmen on contract basis.

In the claim petition it has been pleaded that earlier the workmen's Union in Establishment i.e. Hindustan Aeronautics Karamchari Sabha, raised the dispute of the workman along with some other workmen

before the State Government which, was referred for adjudication before the Industrial Tribunal (II), U.P., Lucknow, registered before Industrial Tribunal (II), U.P., Lucknow as Adj. Case No.: 126 of 2002.

However, on account of the fact that the workman along with some other workmen were not satisfied with the pairavi of the Union as such an authority letter was filed along with an application by 20 workmen amongst the concerned workman to represent the said case but the Union, filed objection that as applicants who have filed the application are not party in the said case as such they are not entitled to represent the case. By an order dated 10.03.2010, the Hon'ble Presiding Officer held that the workmen are not satisfied with the proceedings through Union, they can raise separate dispute "under the provisions of Act.

Thereafter, an application was filed by 36 workmen including the claimant/workman on 10.07.2010 before, the Hon'ble Presiding Officer, Industrial Tribunal (2), U.P., Lucknow for deletion of the names of the workmen from the reference order so that they may be in position to raise fresh industrial dispute before the competent Forum and the Hon'ble Presiding Officer, Industrial Tribunal (2), U.P., Lucknow after hearing the parties concerned was pleased to allow the said application except three whose names were not mentioned in reference order.

In pursuance to order dated 20.07.2010 the workman concerned along with 32 other workman filed an application before the Regional Labour Commissioner (Central), Lucknow which was registered as Case No. LKO-8(2-32)/2010: Laxmi Narain and 32 others Vs. General Manager, Hindustan Aeronautics Limited and others.

Thereafter, Regional Labour Commissioner (Central), Lucknow, called upon the parties for conciliation proceedings and in pursuance thereof Hindustan Aeronautics Limited appeared before him and filed their objections and due to the negative attitude of the employers, no settlement could be arrived between the parties.

Since the mandatory period i.e. 45 days as specified under Section 2- A (2) of the Industrial Disputes Act, 1947 (as amended by Industrial Disputes (Amendment) Act, 2010 (No. 24 of 2010) had been expired as such the concerned workman seek the permission from the Regional Labour Commissioner (Central), Lucknow to withdraw the case and to approach the Hon'ble Court on 27.01.2011, which was duly accepted by the Regional Labour Commissioner (Central), Lucknow.

In view of above said factual background the present case has been filed u/s 2A (2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) with following prayer:

> *"WHEREFORE, it is most respectfully prayed that the Hon'ble Court may be pleased to declare that the action of the management in terminating the services of workman with effect from 21.12.2001 is neither legal nor justified and accordingly the workman concerned is entitled to get reinstatement in service together with entire consequential benefits including back wages and other service benefits, in the interest of justice."*

On behalf the respondent written statement has been filed on 02.05.2012 in which following preliminary objection was taken:

> *"1. That the aforesaid ID Case No.74/2011 is not maintainable as per the provisions of ID Act 1947 (as mended by ID (Amendment) Act 2010) because the same is barred by limitation U/S 2A(3) of the ID Act (Amendment 2010) which is quoted as below:*
>
> > *2A(3) "the application referred to in sub section 2 shall be made to Labour Court or Tribunal before the expiry of 3 years from the date of discharge, dismissal, retrenchment or otherwise termination service as specified in sub section 1".*

In addition to the above said facts, the respondent in its written statement also given the parawise reply to the case as set up by the claimant in his statement of claim.

Sri Adarsh Jadghari has submitted that before deciding the matter in question on merit, the question "whether the claim petition filed by the claimant on 28.02.2011 as per the provisions of section 2A (2) of the Act, aggrieved by the order of termination/retrenchment dated 21.12.2001 is barred by the period of limitation as provided u/s 2A(3) of the Act or not?"

Sri Adarsh Jadghari in support of his argument submits, admittedly as per the case of the claimant his services were terminated on 21.12.2001, aggrieved by the same he filed present industrial dispute u/s 2A (2) of the Act; however, u/s 2A (3) of the Act the period of limitation is provided for three

years, from the date of retrenchment/termination, so, the present claim petition is barred by the period of limitation as provided u/s 2A (3) of the Act, liable to be dismissed.

Sri D.K. Gupta, learned counsel for claimant, rebutting the said contention has placed reliance as pleaded in the statement of claim and submits that in view of the facts as stated hereinabove especially in paragraph 27 & 28, which are quoted herein below:

> *"27. That since the mandatory period i.e. 45 days as specified under Section 2- A (2) of the Industrial Disputes Act, 1947 (as amended by Industrial Disputes (Amendment) Act, 2010 (No. 24 of 2010) had been expired as such the concerned workman seek the permission from the Regional Labour Commissioner (Central), Lucknow to withdraw the case and to approach the Hon'ble Court on 27.01.2011, which was duly accepted by the Regional Labour Commissioner (Central), Lucknow.*
>
> *28. That in pursuance thereof, the workman concerned approaching the Hon'ble Tribunal for the adjudication of the industrial disputes as prevalent between the workman and the employers."*

The present claim petition filed u/s 2 (2) of the Act is maintainable and the arguments as raised by the learned counsel for respondent that same is barred by the period limitation is devoid of merit, be rejected.

I have heard the learned counsel for parties and gone through the record.

Before deciding the same it will be appropriate to go through aims and objects of Industrial Dispute Act, 1947 in brief which are that Industrial Disputes Bill was introduced by the Government of India in the Legislative Assembly on the 28th October 1946. After the Select Committee's report on 3rd February 1947, with some amendments, it was passed in March 1947 and became the law from Ist April 1947 repealing the Trade Disputes Act 1929.

While retaining most of the provisions of the earlier law, this Act introduced two new institutions for the prevention and settlement of industrial disputes; works committees consisting of representatives of employers and workers; and machinery for industrial adjudication.

A reference to an industrial tribunal under this Act lies where both parties to any industrial dispute apply for such reference, and also where the appropriate Government considers it expedient so to do. An award of a tribunal has normally to be enforced by the Government and is binding on both parties to the dispute for such periods as may be specified, upto a maximum of one year. This Act seeks to give a new orientation to the entire conciliation machinery.

Another important new feature of the Act is the prohibition of strikes and lockouts during the pendency of conciliation and adjudication proceedings of settlements reached in the course of conciliation proceedings and of awards of industrial tribunals declared binding by the appropriate government.

Rules, orders or notifications requiring the larger industrial establishments to set up works committees were issued by the Government of India and most of the State Governments.

Objectives: General

The objectives of industrial relations and industrial disputes legislation, may be outlined as under:-

(i) Industrial Peace: For prosperity of industry, it is necessary that there be a continuous and growing production which is only possible if (a) there are no interruptions and stoppages in production i.e. absence of disputes, and (b) if the various agencies of production are satisfied and are in a harmonious bent to work. In other words industrial peace is very necessary for the vitality of industry.

(ii) Economic Justice: All interruptions in production arising out of industrial dispute are really caused by the dissatisfaction of labour with their existing economic condition. The history of labour struggle is nothing but a continuous demand for fair retrun to labour expressed in varied forms e.g. (a) increase in wages, (b) resistance to decrease in wages, (c) grant of allowances and benefits etc.(***Hariprasad Vs. A.D.Divelkar, AIR 1957 SC 121***)

Social and economic justice which is the bedrock of our Constitution and economic organisation also requires that any industrial relations or disputes legislation, to be effective remedial statute, must embrace not only law for regulation of labour relations with capital, process for channelizing collective bargaining methods for negotiation, mediation, conciliation and settlements of industrial conflict, but also a system for giving fair play and justice to labour and removal of economic injustice.

The preamble of the Act states that its main object is to make provision for investigation and settlement of industrial disputes. Viewed in the above background, the Industrial Disputes Act 1947 is a progressive piece of social legislation and is designed to settle the disputes on a new pattern known under the Act as adjudication machinery. The object of all labour legislation is to ensure fair wages and to prevent disputes so that production might not be adversely affected. (***Banaras Ice Factory Ltd. Vs. Its Workmen, AIR 1957 SC 167***)

The purpose of the Act is to provide machinery for a just and equitable settlement by adjudication, (***G. Claridge and Company Ltd. Vs. Industrial Tribunal, Bombay, AIR 1951 Bombay 100***) and amelioration of the conditions of workmen in industry.

Individual and collective industrial disputes: Individual as well as collective disputes may ripen into industrial disputes. The true nature of an individual dispute is that it is a collective dispute. Though a dispute may at the inception be initiated by an individual, yet if it is taken up by the fellow-workers or a union, or a sufficient number of workers, it may assume the collective character and would become an industrial dispute. (**Standard Vacum Oil Co. Errakulam Vs. I.Tribunal, Errakulam 1952-II LLJ 612**). A dispute which continues to retain its individual character cannot be regarded as an industrial dispute. This being the basic law, it is within the competence of the legislature to widen or narrow the coverage of an industrial dispute. The Industrial Disputes Act has also been amended to cover some individual disputes. It is not necessary that a majority should take u[an industrial dispute. It is sufficient if a substantial group of workmen take it up. When thus taken, it becomes an industrial or collective dispute.

Individual dispute an industrial dispute: The important amongst the above are however the amendments of 1965. By the Act of 1965, a new Section 2A has been added in Act whereby specified categories of individual disputes are also deemed to be industrial disputes. The section reads as under:

> "*2A. Dismissal, etc of an individual workman to be deemed to be industrial dispute-*
>
> Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute."

This amendment revives, impediment in the way of workman with the necessity that to make an industrial dispute it must be taken up or espoused by substantial section of the workmen or any union of those workmen and gives an individual workman a remedy for security of his service and indirectly freedom to join or not to join any union. Thus, individual disputes could be referred to Tribunal as per Section 2A after 1.12.1965. (**National Productivity Council, 1969-II LLJ 186**).

Thereafter, by Industrial Disputes (Amendment) Act 2010 (Act No.24 of 2010), Section 2A(a), was renumbered as Sub-section (1) and by the same Act i.e. Act No.24 of 2010 Sub-section (2) and Sub-section (3) have been inserted after Section 2A (1) of Industrial Dispute Act 1947 which came into effect w.e.f. 15.09.2010, which reads as under:

> *"2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute -*
>
> *"(1) Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.*
>
> *(2) Notwithstanding anything contained in Section 10, any such workman as is specified in sub-Section(1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.*

(3) The application referred to in sub-Section(2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section(1)."

Now the core question to be considered is that in view of the facts which are stated hereinabove, that admittedly the services of applicant was terminated on 21.12.2001, thereafter he has filed the present case before this Tribunal u/s 2A of the Act on 28.02.2011 on the grounds as taken by him in his claim petition, is maintainable or barred by the period of limitation as provided u/s 2A(3).

Answer to the said question find place in the judgment passed by Hon'ble the Karnataka High Court in ***ITC Infotech India Ltd. vs. Venkataramana Uppada ILR 2016 Karnataka 3041***, relevant potion quoted as under:

"19. Keeping the above principles in mind, a reading of Section 2A(3) would lead to an irresistible conclusion that time stipulated for invoking the jurisdiction of the Labour Court or the Tribunal as the case may be, has to be necessarily "before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section (1)." Time limit for making an application to the Labour Court stipulated in sub-Section (3) of Section 2A does not appear to have a bearing to the provisions of sub-Section (2) of Section 2A. In any event right conferred under Section 2A would lapse immediately preceding the date of expiry of three years from the date of dismissal, discharge etc.,. In other words, the limitation of three years prescribed under sub-Section (3) of Section 2A being mandatory, same cannot be condoned by taking recourse to Section 5 of the Limitation Act, 1963 which has no application to the provisions of Industrial Disputes Act, 1947.

20. It is well settled principle that if an act is required to be performed within a specified time, the same would primarily be mandatory. It has been held in the case of NAZIRUDDIN VS SITARAM AGARWAL reported in AIR 2003 SCW 908 to the following effect:

"The Courts jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case, the Court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of provision is plain and unambiguous. It cannot add or subtract the words to a statute or read something into it which is not there. It cannot re-write or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of legislature must be gathered from the language used."

21. Thus, in the background of the dicta of the Apex Court in NAZIRUDDIN's case referred to supra, when Section 2A is perused, it would indicate that if the legislature really intended that the period of limitation provided in sub-Section (3) of Section 2A was to be construed as directory, then it would not have prescribed the limitation of three years and it would have used the words "at any time" instead of using the words "before the expiry of three years". Though the words at any time' is found in Section 10(1), same is conspicuously absent in sub-Section(3) of Section 2A which would clearly depict the intention of the legislature namely, it had deliberately imposed limitation period under sub-Section (3) of Section 2A and as such legislature did not employ the words at any time' in the said provision as found in Section 10(1) and in its place, it has specifically incorporated the words before the expiry of three years'. Hence, to interpret the period of limitation found in sub-Section (3) of Section 2A as directory and not mandatory would amount to adding something which is not provided in the provision by the legislature or it would amount to doing violence to the provision, if such interpretation is sought to be made."

And Hon'ble Rajasthan High court in the case of ***Pankaj Swami vs. Rajasthan State Road Transport Corporation & ors. MANU/RH/1788/2019*** after taking into consideration the provisions of sedation 2A(2) & 2A(3) of the Act held as under:

"The provisions are explicit, wherein the workman can approach the Labour Court for adjudication of the dispute in case of discharge, dismissal, retrenchment etc., however, sub-section (3) provides that the application should be made to the Labour Court before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified.

8. The submission made by learned Counsel for the petitioner that as the cause of action arose to the petitioner prior to introduction of the provision of limitation by sub-section (3) the same would have no application is concerned, the submission made is fallacious, inasmuch as, the provision under which the application has been filed by the petitioner i.e. section 2-A(2) of the Act, itself was introduced by

the amendment Act of 2010 alongwith the limitation therein and therefore, the provision of limitation which was introduced in the year 2010 alongwith the main provision providing for the limitation would apply with all force and the submission that the same would have no application to the cause of action, which arose prior to 2007, has no basis.

The submissions as made, if accepted, would result in circumstances where if the cause of action has arisen post 2010, the same would be barred, whereas the causes, which arose prior to 2010 like in the year 2007 in the present case and the application is filed after 7 years, the same would never become barred by limitation, such a result is legally untenable.

9. The submission made by learned Counsel for the petitioner that as the petitioner had approached the Conciliation Officer and had raised the dispute before him, where there was no limitation and the petitioner approached the Labour Court only as per the directions of the Conciliation Officer the claim could not be rejected by barred by limitation also does not advance the cause of the petitioner, inasmuch as, the petitioner could have taken advantage of the said position, if the Conciliation Officer had sent a failure report to the appropriate Government who in turn had referred the dispute to the Labour Court. Merely because the Conciliation Officer suggested approaching the Labour Court, which suggestion was accepted by the petitioner, cannot be termed as a reference under section 10 of the Act to the Labour Court.

10. In view of the above discussion in so far as the rejection of the claim of the petitioner by the Labour Court being barred by limitation is concerned, the same cannot be faulted."

And in the case of ***Parthasarathy vs. Souther Pins and Products Pvt. Ltd. and Ors. MANU/TN/6691/2020*** Hon'ble the High Court of Madras has held as under:

"Inasmuch as the notice of termination of the Petitioner in the present case has been made on 06.10.2014 under Section 2-A(2) of the Act after the said amendment has come into force, the limitation of three years prescribed under Section 2-A(3) of the Act would necessarily apply. As such, there is no infirmity in the decision-making process of the Labour Court in refusing to entertain the application made by the Petitioner has time barred. This view is supported by the decisions of this Court in the following cases:-

(i) ITC Infotech India Ltd. v. Venkataramana Uppada (Order dated 03.03.2016 in W.P. No. 27510 of 2015 passed by the High Court of Karnataka)

(ii) Management of Ashok Leyland v. Presiding Officer, Labour Court (Order dated 13.04.2016 in W.P. Nos. 9640 and 9641 of 2016 passed by this Court)

(iii) Ravi Kumar v. Management, Tamil Nadu State Road Transport Corporation (Order dated 11.04.2017 in W.P. (MD) No. 4269 of 2017 passed by the Madurai Bench of this Court)

(iv) K. Settu v. Assistant Engineer, Tamil Nadu Electricity Board (Order dated 20.09.2019 in W.P. No. 8413 of 2019 passed by this Court)

5. A feeble attempt is made on behalf of the Petitioner to suggest that the period of conciliation must be excluded while computing the limitation. It is, no doubt, true that Section 2-A(2) of the Act contemplates such application to be made to the Labour Court after the expiry of 45 days from the date of application to the Conciliation Officer is made. However, it does not require that the conciliation proceedings should have been completed before making that application under Section 2-A(2) of the Act. The words in Section 2-A(3) of the Act are clear enough that the limitation has to be reckoned on the expiry of three years from the date of termination. The Petitioner in the instant case had made the application for conciliation on 12.04.2017 which had also concluded on 27.06.2017, but the Petitioner had not approached the Labour Court after 45 days either from 12.04.2017 or even from 27.06.2017. As such, the contentions made on behalf of the Petitioner cannot be countenanced."

(see also Kandasamy Spinning Mills Private Ltd. vs S. Palanisamy and Ors. MANU/RN/6831/2019

Thus, in view of above said fact, combined reading of section 2A (2) and 2A (3) of the Act, the legal position which emerge out is that if a workman is aggrieved by order of discharge, dismissal, retrenchment or otherwise termination, he may approach the Tribunal within a period three years from dated of passing of order.

Taking into consideration, above said facts and positon of law as well that "if law provides a particular thing that all other modes or methods of doing that thing must be deemed to have been prohibited", the said proposition of law is first held in the case of ***Tylor Vs. Tylor (1875) LR 1 ChD 426*** and adopted later by the

Judicial Committee in Nazir Ahmed Vs. King Emperor AIR 1936 PC 253 and thereafter by the Hon'ble Supreme Court in a series of judgments including those in ***Rao Shiv Bahadur Singh & another Vs. State of Vindhya Pradesh AIR 1954 SC 322, State of Uttar Pradesh Vs. Singhara Singh AIR 1964 SC 358, Chandra Kishore Jha Vs. Mahavir Prasad 1999 (8) SCC 266, Dhananjaya Reddy Vs. State of Karnataka 2001 (4) SCC 9 and Gujarat Urja Vikas Nigam Ltd. Vs. Essar Power Ltd. 2008 (4) SCC 755***.

In the case of ***Grasim Industries Ltd. Vs. Collector of Customs, Bombay, (2002) 4 SCC 297***, the Hon'ble Supreme Court held as under:-

> *"No words or expressions used in any statute can be said to be redundant or superfluous. In matters of interpretation one should not concentrate too much on one word and pay too little attention to other words. No provision in the statute and no word in any section can be construed in isolation. Every provision and every word must be looked at generally and in the context in which it is used. It is said that every statute is an edict of the legislature. The elementary principle of interpreting any word while considering a statute is to gather the mens or sententia legis of the legislature. Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the Court to take upon itself the task of amending or alternating the statutory provisions. Wherever the language is clear the intention of the legislature is to be gathered from the language used. While doing so what has been said in the statute as also what has not been said has to be noted. The construction which requires for its support addition or substitution of words or which results in rejection of words has to be avoided".*

Hon'ble the Apex Court in the case of ***Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd., (2003) 2 SCC 111***, held as under:-

> *"24. True meaning of a provision of law has to be determined on the basis of what provides by its clear language, with due regard to the scheme of law.*
>
> *25. Scope of the legislation on the intention of the legislature cannot be enlarged when the language of the provision is plain and unambiguous. In other words statutory enactments must ordinarily be construed according to its plain meaning and no words shall be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute".*

In the case of ***Harshad S. Mehta Vs. State of Maharashtra, (2001) 8 SCC 257***, it has been held as under:-

> *"There is no doubt that if the words are plain and simple and call for only one construction that construction is to be adopted whatever be its effect".*

In the case of ***Union of India Vs. Hansoli Devo (2002) 7 SCC 273***, Hon'ble the Supreme Court observed as under:-

> *"9.It is a cardinal principle of construction of statute that when language of the statute is plain and unambiguous, then the court must give effect to the words used in the statute and it would not be open to the courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act."*

In the case of ***Patango Kadam Vs. Prithviraj Sayajiro Yadav Deshmukh (2001) 3 SCC 594***, took the view:-

> *"12. Thus when there is an ambiguity in terms of a provision, one must look at well-settled principles of construction but it is not open to first to create an ambiguity which does not exist and then try to resolve the same by taking recourse to some general principle."*

Reverting to the facts of the present case, as per the admitted position, the services of the workman was terminated on 21.12.2001 and the same has been challenged by him by filing the present industrial dispute on 28.02.2011.

So, keeping in view the above said facts as well as the workman cannot derive any benefit from the facts on which he has approved the Tribunal after expiry of period three years from the date of his termination, because his services were terminated on 21.12.2001 and filed the present case on 28.02.2011 u/s 2A (2) of the Act, as such, the claim petition is barred by the period of limitation provided u/s 2A (3), liable to be rejected.

Accordingly, the same is rejected on the ground that same is barred by period of limitation as per section 2A (3) of the Industrial Disputes Act, 1947.

Award as above.

Justice ANIL KUMAR, Presiding Officer

नई दिल्ली, 8 मई, 2023

का.आ. 747.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन बैंक प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चैन्नई के पंचाट संदर्भ संख्या (11/2019) को प्रकाशित करती है ।

[सं. एल-12011/84/2018 -आई आर (बी-II)]

सलोनी, उप निदेशक

New Delhi, the 8th May, 2023

S.O. 747.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.11/2019) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Chennai as shown in the Annexure, in the industrial dispute between the management of Indian Bank and their workmen

[No. L-12011/84/2018- IR(B-II)]

SALONI, Dy. Director

ANNEXURE

BEFORE THE CGIT-CUM-LABOUR COURT & EPF APPELLATE TRIBUNAL CHENNAI

ID No. 11/2019

Present: DIPTI MOHAPATRA, LL.M., Presiding Officer

Date: 16.02.2023

Sri A. Mohan
Represented by the General Secretary
Indian Bank Employees Union
No. 6, Moore Street, Mannady
Chennai-600001 …1st Party/Petitioner

AND

The General Manager
Indian Bank, HRM Department
Corporate Office
254-260, Avvai Shanmugham Salai
Royapettah
Chennai-600014 ….2nd Party/Respondent

Appearance:

For the 1st Party/Petitioner : Advocates, M/s KM Ramesh
For the 2nd Party/Respondent : Advocates, M/s T.S Gopalan & Co.

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-12011/84/2018-IR (B.II) dtd. 09.01.2019 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

"**Whether the action of the management of Indian Bank, in terminating the services of Sri A. Mohan, Tiny Deposit Collector is justified? If so, to what relief is Sri A. Mohan entitled to?"**

2. On receipt of the above reference from the appropriate Government, the dispute on reference is registered as ID No. 11/2019 and due notices were issued to both sides for their appearance on 25.03.2019. The

Petitioner / 1st Party Union did not appear. The case was listed to four more dates till 16.09.2019. On that day the Petitioner filed the Claim Statement and the case was listed for Counter Statement and the Respondent filed Counter Statement on 19.12.2019. Accordingly, the Petitioner was directed to file Affidavit-Evidence and documents fixing the case to 07.01.2020.The Petitioner did not turn up resulting two more dates will 19.03.2020. None appeared on behalf of the Petitioner. The case was listed to 12.05.2020. The Petitioner failed to file the Affidavit-Evidence. Due to the outbreak of Pandemic COVID-19, the case was suo-moto listed and relisted to several dates in the whole of the year 2020 and also till 15.06.2021 intervening several dates of adjournment. The Petitioner did not appear nor filed any Proof of Affidavit on 15.06.2021. The case was again re-scheduled to further dates for the same purpose till 05.01.2022 intervening 4 adjournments. The Petitioner did not turn up. However without resorting to any coercive steps, the Petitioner was afforded with further 7 adjournments till 13.09.2022. The Petitioner chose not to file any Affidavit-Evidence despite of the adjournments. However, for the interest of justice, the Petitioner was again afforded with last chance fixing the case to 20.10.2022. The Petitioner did not turn up. None behalf of the Petitioner nor any Authorized Representative appeared. The case is reserved for final order. Even till the date of final adjudication, neither any Petition nor the Affidavit-Evidence is filed by the Petitioner Union

3. It appears the petitioner is not interested to proceed with the case even if sufficient opportunities were afforded to it. It is felt the Petitioner deliberately withheld to introduce himself in dock. In such circumstance, the Tribunal is not in a position to adjudicate the dispute as referred by the Appropriate Government vide dtd.09.01.2019. The case is liable for dismissal due to non-cooperation and default of the Petitioner. In the circumstance, it is held proper to dispose of the case without wasting the valuable time of the Tribunal.

In view of the discussion held in preceding paragraph, it deems there exists no dispute for adjudication as referred by the Appropriate Government.

In the result the ID case stands dismissed.

An Award is passed accordingly.

DIPTI MOHAPATRA, Presiding Officer

नई दिल्ली, 8 मई, 2023

का.आ. 748.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार प्रबंध निदेशक, भारत इम्यूनोलॉजिकल कॉर्पोरेशन लिमिटेड, ओपीवी प्लांट, चौला, बुलंदशहर (यू.पी);महाप्रबंधक, भारत इम्यूनोलॉजिकल कॉर्पोरेशन लिमिटेड, ओपीवी प्लांट, चौला, बुलंदशहर (यू.पी), के प्रबंधतंत्र के संबद्ध नियोजकों और श्री अरविंद सोलंकी, और सुश्री जगवती, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-2 नई दिल्ली के पंचाट (संदर्भ सं. 155/2012) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 06.05.2023 को प्राप्त हुआ था।

[सं. एल-42012/26/2012 -आई आर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 8th May, 2023

S.O. 748.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 155/2012) of the Central Government Industrial Tribunal cum Labour Court - II New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The Managing Director, Bharat Immunological Corporation Ltd., OPV Plant, Chaula, Bulandshahr (U.P) ;The General Manager, Bharat Immunological Corporation Ltd., OPV Plant, Chaula, Bulandshahr (U.P), and Shri Arvind Solanki, & Ms Jagwati ,Worker, which was received along with soft copy of the award by the Central Government on 06.05.2023.

[No. L-42012/26/2012 - IR(DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI.

Present: Smt. PRANITA MOHANTY, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 155/2012

Date of Passing Award- 26th April, 2023

Between:

Shri Arvind Solanki, S/o Sh. Harfool Singh,
Vill & PO Chola, Distt.,
Bulandshahr (U.P.)
Substituted by LRs namely.
Jagwati W/o Late Arvind Kumar Solanki. ….Workman

Versus

Managing Director,
Bharat Immunological Corporation Ltd.,
Vill. Chaula,
Bulandshahr (U.P).

General Manager,
Bharat Immunological Corporation Ltd.,
Vill. Chaula,
Bulandshahr (U.P). ….Managements.

Appearances:-

Shri Satish Kumar Sharma , Ld .A/R for the claimant.
None for the Management

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Bharat Immunological Corporation Ltd., and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-42012/26/2012 (IR(DU) dated 15.10.2012 to this tribunal for adjudication to the following effect.

> **"Whether the action of management in terminating services of workman Sh. Arvind Solanki S/o Harfool Singh without complying with provisions of 25 F , 25 N is illegal and unjustified? If so, what relief he is entitled to?"**

As per the claim statement the claimant Arvind Kumrar Solanki (Since dead and substituted by wife Smt. Jagwati) was initially appointed 28.10.1998 as a casual labour in the establishment of the mgt for doing the work of grass cutting and general cleaning in the premises of the mgt. He was discharging a perennial of work. At the time of initial appointment the mgt had obtained the signature of the workman on some plane papers and on some vouchers on the pretest that EPF and ESI subscriptions shall be made for him. But in fact except the ESI subscription no other benefit was granted to him by the mgt. The claimant during the course of employment had completed 240 days of continuous service in a calendar year for 3 consecutive years. Hence, the mgt had paid bonus to him. During this process the claimant had work continuously from 28.10.1998 to 06.01.2011 as a causal labour. But as per the notification dated 15.06.1985 issued by the Govt. of Uttar Pradesh the service of the claimant should have been made regular with the mgt since his land was acquired by the mgt. But the mgt did not regularize his service and workman was insisting for the same. This created annoyance in the mind of the mgt and on 07.01.2011 his service was illegally terminated by the mgt. On that day, when he reached the factory premises the security guard did not allow him entry and showed a letter dated 05.01.2011 issued by the Deputy CGM(U) in which it was clearly mentioned that the claimant workman should not be allowed entry into the premises of the mgt to perform his duty. The said action amounts to termination of the service of the claimant who was working continuously from Oct 1998 to Jan 2011. At the time of such termination, the mgt had neither given the notice of termination notice pay, retrenchment compensation gratuity etc. to the claimant in compliance of the provisions of section 25F, 25G and 25H of the ID Act. No disciplinary action was also

taken against him before his termination. There were 14 other co-workmen whose services were regularize by the mgt on the ground that there lands were acquired by the mgt along with this claimant. Being aggrieved he had raised a dispute before the Labour Commissioner and on failure of conciliation the appropriate govt. referred the matter to this Tribunal to adjudicate if a service of the claimant has been illegally terminated. Thus in the claim petition the claimant had prayed for an award to the effect that the benefits to which the deceased claimant is entitled to be granted to his legal heirs as per the provisions 25 F and 25N of the Id act along with any other relief which would be proper in the facts and circumstances of the case.

The mgt filed written statement denying the stands of the claimant. The maintainability of the claim has been challenged on the ground that there exists no Industrial Dispute between the claimant and the mgt. It has been specifically stated that the provisions of section 25F 25G and 25H are not applicable since the service of the claimant as admitted by him was on account of non performance of duty and disobeying the directives of his monitoring officer. The claimant had raised a dispute before the conciliation officer Dehradun, where it was pointed out that the claimant was working as a casual labour/daily wager for grass cutting and maintenance of garden. He had worked for a short period as a casual worker and paid wage for the said period. Neither he was a regular employee nor the nature of work executed by him was perennial. Rather the engagement was need based. Hence, the service of the claimant came to an end automatically when there was no work. The claimant of the claimant for reinstatement and continuity of service not maintainable. It has also been stated that the mgt is a public sector undertaking having its own rules for recruitment into regular post. The claimant was never appointed as a regular employee. Not only that the claimant had not completed 240 days of work in the preceding calendar year of the alleged termination and as such notice u/s 25F of the ID Act or any kind of compensation was payable to him. This claimant along with few other workers was found stealing valuable articles from the premises of the mgt and for the said incident FIRE was lodged. For loss of confidence the engagement of the claimant was discontinued the claimant has not come up with clean hands. Initially he had filed the claim petition claiming his appointment as an Assistant. On realization of the mistake he amended the claim petition. Hence, the reliefs sought cannot be granted to him.

The claimant filed written replication to the w.s of the mgt in which it has been explained that the amendment was for correction of some bona fide mistakes and the earlier claim petition in view of the amendment cannot be looked into.

On these rival pleadings the following issued are framed for adjudication.

Issues

1. Whether the action of the mgt in non engaging the claimant amounts to punitive action
2. Whether the claimant had completed 240 days continuous service in a calendar year with the mgt.
3. As in terms of reference.

The claimant since died his wife Jagwati testified as WW1. She proved the documents marked in a series of ww1/1 to ww1/8. The witness was cross examined at length by the mgt. After closer of the evidence of the claimant, when the mgt was called upon to adduce evidence, none turned up to adduce evidence and the mgt evidence was closed by order dated 13.10.2022.

Findings

Issue no.1

It is the stand of the claimant that he was engaged as a casual worker on daily wage basis on 28.10.1998. Though no document has been produced by the claimant to prove the said engagement, the mgt while filling w.s has admitted the date of initial engagement. The mgt has also admitted in the pleading that the claimant was engaged as a casual worker on daily wage basis for maintenance of the garden and grass cutting. It has been alleged by the claimant that on 07.01.2011 when he reported for work the security guard did not allow him entry and show him a letter dated 05.01.2011 issued by the Deputy CGM R.K Shukla directing that four persons should not be allowed to enter and discharge duty. The said letter has been marked as ww1/7. The claimant has asserted that the list does not contain the name of the claimant Arvind Kumar Solanki. But he was not allowed to work. In the w.s the mgt has stated that for the unruly behavior of the claimant and his involvement in a theft case a decision was taken not to allow the claimant into the premises of the mgt and as such his service was discontinued. The other stand taken by the mgt is that the engagement of the claimant was need based and for non availability of the work his service was discontinued. But surprisingly, no evidence has been adduced by the mgt to prove that the claimant was ever involved in a case of theft or any dissatisfaction was expressed by the supervising over about his non performance. The stand taken in the w.s justifying the action stands not proved. Accordingly it is held that the decision of the mgt in not engaging the claimant who

was working continuously from 28.10.1998 to 06.01.2011 without any justification is illegal. This issue is answer in favour of the claimant.

Issue no.2

The claimant has stated that during his employment he had completed working for 240 days in a calendar year including the year preceding to his termination. The termination becomes illegal for non compliance of the provisions of the 25FR of the ID Act. In the w.s, the mgt has taken a plea that the claimant had never worked for 240 days in a calendar and thus there was no need of complying the provisions of 25F or 25N of the ID Act. Besides the oral statement, the claimant had filed the photo copies of the few pages of the attendance register. The claimant had filed an application for a direction to the mgt to produce the attendance register but the mgt denied possession of the same. The photo copy of the attendance register filed by the claimant proves that the attendance register In respect of the claimant and other casual workers was being maintained by the mgt. Hence it is concluded that the mgt is guilty of surpassing the material documents. In the oral testimony, the claimant has stated that he had completed 240 days in a calendar year and as such the mgt had paid him bonus. To prove this aspect the document has been filed as WW1/4. During cross examination the mgt has not disputed the contents of this document. Hence from the oral evidence coupled with the documents filed by the claimant it is proved that the claimant had worked for 240 days in the calendar year preceding to his termination which had earned him bonus in the year 2010 as stated in the documents marked as WW1/4 issued from the establishment section of the mgt the issue is also answered in favour of the workman.

Issue no. 3

The reference has been received to adjudicate on the legality of the termination of the Service of the claimant and what relief he is entitled to. The claimant while adducing oral evidence has stated that his land was acquired by the mgt and the govt. of Uttar Pradesh has issued a GO directing grant of permanent employment to the persons by the mgt whose land has been acquired. The claimant has filed the said GO as WW1/6. In addition to that he has stated that 14 persons standing gin the same footing have been regularized in service by the mgt. But absolutory evidence has been adduced by the claimant to prove that the policy of the Govt. for giving permanent employment to the land oustees is still in force. Thus, the claim of the claimant for absorbing him in a regular post on account of land acquisition since not legally justified.

In the preceding paragraph it has been held that the termination f the service of the claimant by the mgt is illegal for non compliance of the provisions of section 25F of the ID Act which is mandatory in nature as has been held by the Hon'ble supreme court in the case **Bhuvnesh Kumar Dwivedi vs. M/s Hindalco Industries ltd. (2014 LAB.I.C. 2643 Supreme Court)**. Now it is to be seen what relief the claimant is entitled to on account of the said illegal termination. The Hon'ble Apex Court in case "Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya"has held as under:

The propositions which can be culled out from the aforementioned judgments are:

I) In cases of wrongful termination of service, reinstatement without continuity of service and back wages is the normal rule.

II) Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court to visit instance on lesser wages. If the employer wants to avoid payment of full back wages, then I has to plead and also lead cogent evidence to prove that the employee/workman wads gainfully employed and was getting wages equal to the wages he/she wads drawing prior to the termination of service. This is so because it is settled lat that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments."

In this case the oral evidence of the workman proves that he is unemployed and having no source of income. No rebuttle evidence has been adduced by the mgt. in the case of Anoop Sharma vs. Executive Engineer Public Health Division Panipat(2010) 5SSF497) the Hon'ble Apex Court have further held that when the termination of service happens without complying the provisions of section 25F the action of termination becomes nullity and the employee is entitled to continue in the employment as if his service was never terminated. The Hon'b Apex Court in other cases have also stated that factors which are to be considered while deciding the claim of the claimant for full back wages. The factors are the length of service the nature of the work whether regular or perennial, temporary or seasonal nature etc. In this case the claimant had worked for the mgt from 1998 to 2011 i.e. for a period of 14 years. The claim of the claimant that he was discharging function of perennial nature has remained unrebutted. Hence, the Tribunal from the evidence adduced on record

is of the opinion that the claimant should be reinstated in to service with full back wages. This issue is accordingly answered in favour of the claimant. Hence ordered.

ORDER

The claim be and the same is allowed in favor of the claimant. It is held that the service of the claimant was illegally terminated by the mgt in complete violation of the provisions of 25 F and 25N of the ID Act and for his unemployment he is required to be reinstated into service with full back wages. But in this case, the claimant Arvind Kumar Solanki since died during the pendency of the dispute the mgt is directed to notionally reinstated him into service from the date of illegal termination and grant him full back wages within 2 months from the date of publication of the award without interest. The monetary entitlements of the deceased claimant shall be paid to his legal heir Smt. Jagwati who has been substituted as the legal heir in this proceeding. It is made clear that the benefits payable to the claimant if would not be paid within the time stipulated, the same shall carry interest @of 6 % from the date of accrual and till the final payment is made.

Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 8 मई, 2023

का.आ. 749.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महाप्रबंधक, भारत इम्यूनोलॉजिकल कॉर्पोरेशन लिमिटेड, ओपीवी प्लांट, चौला, बुलंदशहर (यू.पी), के प्रबंधतंत्र के संबद्ध नियोजकों और श्री जितेन्द्र सिंह, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-2 नई दिल्ली के पंचाट (संदर्भ सं. 91/2012) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 06.05.2023 को प्राप्त हुआ था।

[सं. एल- 42012/104/2011 -आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 8th May, 2023

S.O. 749.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 91/2012) of the Central Government Industrial Tribunal cum Labour Court - II New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, Bharat Immunological Corporation Ltd., OPV Plant, Chaula, Bulandshahr (U.P), and Shri Jitender Singh, Worker, which was received along with soft copy of the award by the Central Government on 06.05.2023.

[No. L-42012/104/2011 -IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI.

Present: Smt. PRANITA MOHANTY, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 91/2012

Date of Passing Award- 1st May, 2023

Between:

Shri Jitender Singh S/o Sh. Ramesh Singh
Vill & PO Chola, Distt.,
Bulandshahr (U.P.) …. Workman

Versus

General Manager,
Bharat Immunological Corporation Ltd.,
Vill Chaula,
Bulandshahr (U.P). …..Management.

Appearances:-

Shri Satish Kumar Sharma , Ld .A/R for the claimant.
None for the Management

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Bharat Immunological Corporation Ltd., and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-42012/104/2011 (IR(DU) dated 22.02.2012 to this tribunal for adjudication to the following effect.

> **"Whether the action of management of Bharat Immunological Corporation Ltd. in terminating the services of workman Sh. Jitender Singh S/o Sh. Ramesh Singh without complying with section 25 F & 25 N of the ID Act., 1947 is legal and justified? What relief the workman is entitled to?**

As per the claim statement the claimant Jitender Singh was initially appointed on 26.02.2007 as a casual labour in the establishment of the mgt for doing the work of grass cutting and general cleaning in the premises of the mgt. He was discharging a perennial nature of work. At the time of initial appointment the mgt had obtained the signature of the workman on some plain papers and on some vouchers on the pretext that EPF and ESI subscriptions shall be made for him. But in fact except the ESI subscription no other benefit was granted to him by the mgt. The claimant during the course of employment had completed 240 days of continuous service in a calendar year for 3 consecutive years. Hence, the mgt had paid bonus to him. During this process the claimant had worked continuously from 26.02.2007 to 06.01.2011 as a causal labour. But as per the notification dated 15.06.1985 issued by the Govt. of Uttar Pradesh the service of the claimant should have been made regular with the mgt since his land was acquired by the mgt. But the mgt did not regularize his service and workman was insisting for the same. This created annoyance in the mind of the mgt and on 07.01.2011 his service was illegally terminated by the mgt. On that day, when he reached the factory premises the security guard did not allow him entry and showed a letter dated 05.01.2011 issued by the Deputy CGM(U) in which it was clearly mentioned that the claimant workman should not be allowed entry into the premises of the mgt to perform his duty. The said action amounts to termination of the service of the claimant who was working continuously from Feb2007 1998 to Jan 2011. At the time of such termination, the mgt had neither given the notice of termination notice pay, retrenchment compensation gratuity etc. to the claimant in compliance of the provisions of section 25F, 25G and 25H of the ID Act. No disciplinary action was also taken against him before his termination. There were 14 other co-workmen whose services were regularize by the mgt on the ground that there lands were acquired by the mgt along with this claimant. Being aggrieved he had raised a dispute before the Labour Commissioner and on failure of conciliation the appropriate govt. referred the matter to this Tribunal to adjudicate if a service of the claimant has been illegally terminated. Thus in the claim petition the claimant had prayed for an award to the effect that the benefits to which the deceased claimant is entitled to be granted to his legal heirs as per the provisions 25 F and 25N of the Id act along with any other relief which would be proper in the facts and circumstances of the case.

The mgt filed written statement denying the stands of the claimant. The maintainability of the claim has been challenged on the ground that there exists no Industrial Dispute between the claimant and the mgt. It has been specifically stated that the provisions of section 25F 25G and 25H are not applicable since the service of the claimant was terminated, as admitted by him on account of non performance of duty and disobeying the directives of his monitoring officer. The claimant had raised a dispute before the conciliation officer Dehradun, where it was pointed out that the claimant was working as a casual labour/daily wager for grass cutting and maintenance of garden. He had worked for a short period as a casual worker and paid wage for the said period. Neither he was a regular employee nor the nature of work executed by him was perennial. Rather the engagement was on need based. Hence, the service of the claimant came to an end automatically when there was no work. The claim of the claimant for reinstatement and continuity of service is not maintainable. It has also been stated that the mgt is a public sector undertaking having it's own rules for recruitment into regular post. The claimant was never appointed as a regular employee. Not only that the claimant had not completed 240 days of work in the preceding calendar year of the alleged termination and as such notice u/s 25F of the ID Act or any

kind of compensation was not payable to him. This claimant along with few other workers was found stealing valuable articles from the premises of the mgt and for the said incident FIR was lodged. For loss of confidence, the engagement of the claimant was discontinued. The claimant has not come up with clean hands. Initially he had filed the claim petition claiming his appointment as an Assistant. On realization of the mistake he amended the claim petition. Hence, the reliefs sought cannot be granted to him.

The claimant filed written replication to the w.s of the mgt in which it has been explained that the amendment was for correction of some bona fide mistakes and the earlier claim petition in view of the amendment cannot be looked into.

Findings

On these rival pleadings the following issued are framed for adjudication.

Issues

1 Whether the action of the mgt in terminating the services of the workman Sh. Jitender Singh, without complying with 25F and 25N of the ID Act 1947 is legal and justified? If so its effect?

2. To what relief the workman is entitled to and from which date?

The claimant testified as WW1. He proved the documents marked in a series of WW1/1 to WW1/26. The said documents include the wager attendance record the details of arrears on revision of minimum wages etc. The witness was cross examined at length by the mgt. After closer of the evidence of the claimant, when the mgt was called upon to adduce evidence, none turned up to adduce evidence and the mgt evidence was closed by order dated 13.10.2022.

Findings

Issue no.1

It is the stand of the claimant that he was engaged as a casual worker on daily wage basis on 26.02.2007. Though no document has been produced by the claimant to prove the said engagement, the mgt while filling w.s has admitted the date of initial engagement. The mgt has also admitted in the pleading that the claimant was engaged as a casual worker on daily wage basis for maintenance of the garden and grass cutting. It has been alleged by the claimant that on 07.01.2011 when he reported for work the security guard did not allow him entry and showed him a letter dated 05.01.2011 issued by the Deputy CGM R.K Shukla directing that four persons should not be allowed to enter and discharge duty. The said letter has been marked as WW1/11. In the w.s the mgt has stated that for the unruly behavior of the claimant and his involvement in a theft case a decision was taken not to allow the claimant into the premises of the mgt and as such his service was discontinued. The other stand taken by the mgt is that the engagement of the claimant was need based and for non availability of the work his service was discontinued. But surprisingly, no evidence has been adduced by the mgt to prove that the claimant was ever involved in a case of theft or any dissatisfaction was expressed by the Supervising Officer about his non performance. The stand taken in the w.s justifying the action stands not proved. Accordingly it is held that the decision of the mgt in not engaging the claimant who was working continuously from 28.10.1998 to 06.01.2011 without any justification is illegal. This issue is answer in favour of the claimant.

Issue no. 2

The reference has been received to adjudicate on the legality of the termination of the Service of the claimant and what relief he is entitled to. The claimant while adducing oral evidence has stated that his land was acquired by the mgt and the Govt. of Uttar Pradesh has issued a GO directing grant of permanent employment to the persons by the mgt whose land has been acquired. The claimant has filed the said GO as WW1/6. In addition to that he has stated that 14 persons standing in the same footing have been regularized in service by the mgt. But absolutory no evidence has been adduced by the claimant to prove that the policy of the Govt. for giving permanent employment to the land oustees is still in force. Thus, the claim of the claimant for absorbing him in a regular post on account of land acquisition seems not legally justified.

In the preceding paragraph it has been held that the termination of the service of the claimant by the mgt is illegal for non compliance of the provisions of section 25F of the ID Act which is mandatory in nature as has been held by the Hon'ble supreme court in the case **Bhuvnesh Kumar Dwivedi vs. M/s Hindalco Industries ltd. (2014 LAB.I.C. 2643 Supreme Court)**. Now it is to be seen what relief the claimant is entitled to on account of the said illegal termination. The Hon'ble Apex Court in case of **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya** have held as under:

"The propositions which can be culled out from the aforementioned judgments are:

I) In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

II) Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court to visit instance on lesser wages. If the employer wants to avoid payment of full back wages, then I has to plead and also lead cogent evidence to prove that the employee/workman wads gainfully employed and was getting wages equal to the wages he/she wads drawing prior to the termination of service. This is so because it is settled lat that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments."

In this case the oral evidence of the workman proves that he is unemployed and having no source of income. No rebuttal evidence has been adduced by the mgt. In the case of **Anoop Sharma vs. Executive Engineer Public Health Division Panipat (2010) 5SSF497)** the Hon'ble Apex Court have further held that when the termination of service happens without complying the provisions of section 25F of the ID Act the action of termination becomes nullity and the employee is entitled to continue in the employment as if his service was never terminated. The Hon'ble Apex Court in other cases have also stated that factors which are to be considered while deciding the claim of the claimant for full back wages. The factors are the length of service, the nature of the work, whether regular or perennial, temporary or seasonal nature etc. In this case the claimant had worked for the mgt from 2003 to 2011 i.e. for a period of 8 years. The claim of the claimant that he was discharging function of perennial nature has remained unrebutted. Hence, the Tribunal from the evidence adduced on record is of the opinion that the claimant should be reinstated into service with full back wages for the illegal termination of the service. This issue is accordingly answered in favour of the claimant. Hence ordered.

ORDER

The claim be and the same is allowed in favor of the claimant. It is held that the service of the claimant was illegally terminated by the mgt in complete violation of the provisions of 25 F and 25N of the ID Act and for his unemployment he is required to be reinstated into service with full back wages and continuity of service. The mgt is directed to reinstate the claimant into service within a period of one month from the date of publication of the award and release him the back wages within a further period of one month from the date of reinstatement without interest failing which the amount accrued shall carry interest @of 6% from the date of accrual and till the final payment is made.

Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 8 मई, 2023

का.आ. 750.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महाप्रबंधक, भारत इम्यूनोलॉजिकल कॉर्पोरेशन लिमिटेड, ओपीवी प्लांट, चौला, बुलंदशहर (यू.पी), के प्रबंधतंत्र के संबद्ध नियोजकों और श्री राम अवतार सिंह, द्वारा - राज्य महासचिव, सीटू कार्यालय स्थानीय बस स्टैंड, देहरादून, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-2 नई दिल्ली के पंचाट (संदर्भ संख्या 114/2012) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 06.05.2023 को प्राप्त हुआ था।

[सं. एल- 42012/144/2011 -आई आर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 8th May, 2023

S.O. 750.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 114/2012) of the Central Government Industrial Tribunal cum Labour Court - II New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, Bharat Immunological Corporation Ltd., OPV Plant, Chaula, Bulandshahr (U.P), and Shri Ram Avtar Singh, through- State General Secretary, CITU office Local Bus Stand, Dehradun, which was received along with soft copy of the award by the Central Government on 06.05.2023.

[No. L- 42012/144/2011 -IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI.

Present: Smt. PRANITA MOHANTY, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE No. 114/2012

Date of Passing Award- 1st May, 2023

Between:

Sh. Ram Avtar Singh,
S/o Late Shri Sukha Singh,
C/o Sh. Virendra Bhandari, State General Secretary,
CITU office Local Bus Stand,
Dehradun.

Workman

Versus

General Manager,
Bharat Immunological Corporation Ltd.,
OPV Plant, Chaula,
Bulandshahr (U.P). ….Management.

Appearances:-

Shri Satish Kumar Sharma , Ld .A/R for the claimant.
None for the Management

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Bharat Immunological Corporation Ltd., and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-42012/144/2011 (IR(DU)) dated 26.03.2012 to this tribunal for adjudication to the following effect.

> **"Whether the action of management of Bharat Immunological Corporation Ltd. in terminating the services of workman Ram Avtar Singh S/o Late Sh. Sukha Singh without complying with section 25 (F)(G) (H) is justified? What relief the workman is entitled to?"**

As per the claim statement the claimant Ram Avtar Singh was initially appointed on 01.11.1998 as a casual labour in the establishment of the mgt for doing the work of grass cutting and general cleaning in the premises of the mgt. He was discharging a perennial nature of work. At the time of initial appointment the mgt had obtained the signature of the workman on some plain papers and on some vouchers on the pretext that EPF and ESI subscriptions shall be made for him. But in fact except the ESI subscription no other benefit was granted to him by the mgt. The claimant during the course of employment had completed 240 days of continuous service in a calendar year for 3 consecutive years. Hence, the mgt had paid bonus to him. During this process the claimant had worked continuously from 01.11.1998 to 06.01.2011 as a causal labour. But as per the notification dated 15.06.1985 issued by the Govt. of Uttar Pradesh the service of the claimant should have been made regular with the mgt since his land was acquired by the mgt. But the mgt did not regularize his service and

workman was insisting for the same. This created annoyance in the mind of the mgt and on 07.01.2011 his service was illegally terminated by the mgt. On that day, when he reached the factory premises the security guard did not allow him entry and showed a letter dated 05.01.2011 issued by the Deputy CGM(U) in which it was clearly mentioned that the claimant workman should not be allowed entry into the premises of the mgt to perform his duty. The said action amounts to termination of the service of the claimant who was working continuously from Feb 2007, 1998 to Jan 2011. At the time of such termination, the mgt had neither given the notice of termination notice pay, retrenchment compensation gratuity etc. to the claimant in compliance of the provisions of section 25F, 25G and 25H of the ID Act. No disciplinary action was also taken against him before his termination. There were 14 other co-workmen whose services were regularize by the mgt on the ground that there lands were acquired by the mgt along with this claimant. Being aggrieved he had raised a dispute before the Labour Commissioner and on failure of conciliation the appropriate govt. referred the matter to this Tribunal to adjudicate if a service of the claimant has been illegally terminated. Thus in the claim petition the claimant had prayed for an award to the effect that the benefits to which the deceased claimant is entitled to be granted to his legal heirs as per the provisions 25 F and 25N of the Id act along with any other relief which would be proper in the facts and circumstances of the case.

The mgt filed written statement denying the stands of the claimant. The maintainability of the claim has been challenged on the ground that there exists no Industrial Dispute between the claimant and the mgt. It has been specifically stated that the provisions of section 25F 25G and 25H are not applicable since the service of the claimant was terminated, as admitted by him on account of non performance of duty and disobeying the directives of his monitoring officer. The claimant had raised a dispute before the conciliation officer Dehradun, where it was pointed out that the claimant was working as a casual labour/daily wager for grass cutting and maintenance of garden. He had worked for a short period as a casual worker and paid wage for the said period. Neither he was a regular employee nor the nature of work executed by him was perennial. Rather the engagement was on need based. Hence, the service of the claimant came to an end automatically when there was no work. The claim of the claimant for reinstatement and continuity of service is not maintainable. It has also been stated that the mgt is a public sector undertaking having it's own rules for recruitment into regular post. The claimant was never appointed as a regular employee. Not only that the claimant had not completed 240 days of work in the preceding calendar year of the alleged termination and as such notice u/s 25F of the ID Act or any kind of compensation was not payable to him. This claimant along with few other workers was found stealing valuable articles from the premises of the mgt and for the said incident FIR was lodged. For loss of confidence, the engagement of the claimant was discontinued. The claimant has not come up with clean hands. Initially he had filed the claim petition claiming his appointment as an Assistant. On realization of the mistake he amended the claim petition. Hence, the reliefs sought cannot be granted to him.

The claimant filed written replication to the w.s of the mgt in which it has been explained that the amendment was for correction of some bona fide mistakes and the earlier claim petition in view of the amendment cannot be looked into.

On these rival pleadings the following issued are framed for adjudication.

Issues

1 Whether the action of the mgt in terminating the services of the workman Sh. Ram Avtar Singh S/o Late Sh. Sukhla Singh without complying with 25(F) (G) (H) is justified? If so its effect?

2. To what relief the workman is entitled to and from which date?

The claimant testified as WW1. He proved the documents marked in a series of WW1/1 to WW1/12. The witness was cross examined at length by the mgt. After closer of the evidence of the claimant, when the mgt was called upon to adduce evidence, none turned up to adduce evidence and the mgt evidence was closed by order dated 13.10.2022.

Findings

Issue no.1

It is the stand of the claimant that he was engaged as a casual worker on daily wage basis on 26.02.2007. Though no document has been produced by the claimant to prove the said engagement, the mgt while filling w.s has admitted the date of initial engagement. The mgt has also admitted in the pleading that the claimant was engaged as a casual worker on daily wage basis for maintenance of the garden and grass cutting. It has been alleged by the claimant that on 07.01.2011 when he reported for work the security guard did not allow him entry and showed him a letter dated 05.01.2011 issued by the Deputy CGM R.K Shukla directing that four

persons should not be allowed to enter and discharge duty. The said letter has been marked as WW1/11. In the w.s the mgt has stated that for the unruly behavior of the claimant and his involvement in a theft case a decision was taken not to allow the claimant into the premises of the mgt and as such his service was discontinued. The other stand taken by the mgt is that the engagement of the claimant was need based and for non availability of the work his service was discontinued. But surprisingly, no evidence has been adduced by the mgt to prove that the claimant was ever involved in a case of theft or any dissatisfaction was expressed by the Supervising Officer about his non performance. The stand taken in the w.s justifying the action stands not proved. Accordingly it is held that the decision of the mgt in not engaging the claimant who was working continuously from 28.10.1998 to 06.01.2011 without any justification is illegal. This issue is answer in favour of the claimant.

Issue no. 2

The reference has been received to adjudicate on the legality of the termination of the Service of the claimant and what relief he is entitled to. The claimant while adducing oral evidence has stated that his land was acquired by the mgt and the Govt. of Uttar Pradesh has issued a GO directing grant of permanent employment to the persons by the mgt whose land has been acquired. The claimant has filed the said GO as WW1/6. In addition to that he has stated that 14 persons standing in the same footing have been regularized in service by the mgt. But absolutory no evidence has been adduced by the claimant to prove that the policy of the Govt. for giving permanent employment to the land oustees is still in force. Thus, the claim of the claimant for absorbing him in a regular post on account of land acquisition seems not legally justified.

In the preceding paragraph it has been held that the termination of the service of the claimant by the mgt is illegal for non compliance of the provisions of section 25F of the ID Act which is mandatory in nature as has been held by the Hon'ble supreme court in the case **Bhuvnesh Kumar Dwivedi vs. M/s Hindalco Industries ltd. (2014 LAB.I.C. 2643 Supreme Court)**. Now it is to be seen what relief the claimant is entitled to on account of the said illegal termination. The Hon'ble Apex Court in case of **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya** have held as under:

"The propositions which can be culled out from the aforementioned judgments are:

I) In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

II) Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court to visit instance on lesser wages. If the employer wants to avoid payment of full back wages, then I has to plead and also lead cogent evidence to prove that the employee/workman wads gainfully employed and was getting wages equal to the wages he/she wads drawing prior to the termination of service. This is so because it is settled lat that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments."

In this case the oral evidence of the workman proves that he is unemployed and having no source of income. No rebuttal evidence has been adduced by the mgt. In the case of **Anoop Sharma vs. Executive Engineer Public Health Division Panipat(2010) 5SSF497)** the Hon'ble Apex Court have further held that when the termination of service happens without complying the provisions of section 25F of the ID Act the action of termination becomes nullity and the employee is entitled to continue in the employment as if his service was never terminated. The Hon'ble Apex Court in other cases have also stated that factors which are to be considered while deciding the claim of the claimant for full back wages. The factors are the length of service, the nature of the work, whether regular or perennial, temporary or seasonal nature etc. In this case the claimant had worked for the mgt from 2003 to 2011 i.e. for a period of 8 years. The claim of the claimant that he was discharging function of perennial nature has remained unrebutted. Hence, the Tribunal from the evidence adduced on record is of the opinion that the claimant should be reinstated into service with full back wages for the illegal termination of the service. This issue is accordingly answered in favour of the claimant. Hence ordered.

ORDER

The claim be and the same is allowed in favor of the claimant. It is held that the service of the claimant was illegally terminated by the mgt in complete violation of the provisions of 25 F and 25N of the ID Act and for his unemployment he is required to be reinstated into service with full back wages and continuity of service.

The mgt is directed to reinstate the claimant into service within a period of one month from the date of publication of the award and release him the back wages within a further period of one month from the date of reinstatement without interest failing which the amount accrued shall carry interest @of 6% from the date of accrual and till the final payment is made.

Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 8 मई, 2023

का.आ. 751.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार प्रबंध निदेशक, मैनकाइंड फार्मा लिमिटेड, नई दिल्ली, के प्रबंधतंत्र के संबद्ध नियोजकों और महासचिव, भारतीय मेडिकल सेल्स, सुभाष रोड, रोहतक, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह-श्रम न्यायालय-2 नई दिल्ली के पंचाट (संदर्भ सं. 70/2022) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 06.05.2023 को प्राप्त हुआ था।

[सं. एल- 42011/41/2022 -आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 8th May, 2023

S.O. 751.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 70/2022) of the Central Government Industrial Tribunal cum Labour Court - II New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The Managing Director, Mankind Pharma Ltd., New Delhi, and The General Secretary, Bhartiya Medical Sales, Subhash Road, Rohtak, which was received along with soft copy of the award by the Central Government on 06.05.2023.

[No. L- 42011/41/2022 -IR (DU)

D. K.HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT-II, NEW DELHI

Present: Smt. PRANITA MOHANTY

ID. No. 70/2022

Shri J. P Kaushik,
General Secretary, Bhartiya Medical Sales,
Representatives Mahasangh, 41, 1st Floor, Ganga
Place Complex, Subhash Road, Rohtak -124001. ….claimant

Versus

1. Pratueush Managing Director,
Mankind Pharma Ltd.,
208, Okhla Industrial Area, Phase-III,
New Delhi110002. ….Management.

AWARD

In the present case, a reference was received from the appropriate Government vide letter No. L-42011/41/2022 IR (DU) dated 21.02.2022 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Act, for adjudication of a dispute, terms of which are as under:

"1. Whether the claim of Bhartiya Medical & Sales Representatives Mahasangh (BMSRM) , Rohtak Vide Letter dated 10.06.2019 that the management of Mankind Pharma Ltd. New Delhi compelled the members of Bhartiya Medical and Sales Representatives Mahasangh (BMSRM), Rohtak to resign from the membership of the union is proper, legal and justified? If yes, to what relief the union is entitled and what other directions are necessary in the matter?

2. **Whehter the claim of the management of Mankind Pharma Ltd. vide letter dated 17.07.2019 that Bhartiya Medical & Sales Representatives Mahasangh (BMSRM), Rohtak resorted to unfair labour practice by indulging in acts of force or violence or to hold out threats of intimidation against the workman with a view to prevent from attending work, and demonstration at the resident of the managerial staff of the company, is proper, legal and justified? If yes, to that relief the management of Mankind Pharma Ltd. is entitled and what other directions are necessary in the matter?"**

2. In the reference order, the appropriate Government commanded the parties raising the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Despite directions so given, claimant opted not to file the claim statement.

3. On receipt of the above reference, notice was sent to the workman as well as the management. Neither the postal article sent to the claimant, referred above, was received back nor was it observed by the Tribunal that postal services remained unserved in the period, referred above. Therefore, every presumption lies in favour of the fact that the above notice was served upon the claimant. Despite service of the notice, claimant opted to abstain away from the proceedings. No claim statement was filed on his behalf. Thus, it is clear that the workman is not interested in adjudication of the reference on merits.

4. Since the workman has neither put his appearance nor has he led any evidence so as to prove his cause against the management, this Tribunal is left with no choice, except to pass a 'No Dispute/Claim' award. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated. 1st May, 2023 PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 8 मई, 2023

का.आ. 752.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार अध्यक्ष, मुख्यालय दिल्ली क्षेत्र, दिल्ली कैंट; कार्यकारी निदेशक,मुख्यालय दिल्ली क्षेत्र, दिल्ली कैंट; वृषभ स्टेशन कैंटीन 25, द मॉल, दिल्ली कैंट, के प्रबंधतंत्र के संबद्ध नियोजकों श्री राम बहारदुर, कामगार , के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-2 नई दिल्ली के पंचाट (संदर्भ संख्या 26/2016) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 06.05.2023 को प्राप्त हुआ था।

[सं. एल-42025/07/2023-81 -आई आर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 8th May, 2023

S.O. 752.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 26/2016) of the Central Government Industrial Tribunal cum Labour Court - II New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The Chairman, HQ Delhi Area, Delhi Cantt ; The Executive Director, HQ Delhi Area,Delhi Cantt ; Taurus Station Canteen 25, The Mall, Delhi Cantt, and Shri Ram Bahardur, Worker, which was received along with soft copy of the award by the Central Government on 06.05.2023.

[No. L-42025/07/2023-81-IR (DU)

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI.

Present: Smt. PRANITA MOHANTY, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE No. 26/2016

Date of Passing Award- 25.04.2023

Between:

Shri Ram Bahardur, S/o Sh. Gayadeen
R/o V-17, Old Nangal,
Delhi Cantt., New Delhi. …. Workman

Versus

1. Chairman,
   HQ Delhi Area,
   Delhi Cantt—110010.

2. Executive Director,
   HQ Delhi Area,
   Delhi Cantt-110010.

3. Taurus Station Canteen
   25, The Mall,
   Delhi Cantt-110010 …..Managements

Appearances:-

Shri S.B Shaily, (A/R)	For the claimant
Shri Santosh Kumar Pandey (A/R)	For the Management

AWARD

This is an application u/s 2A filed by the claimant alleging illegal termination by management.

As per the claim statement the claimant was appointed on contractual basis in the management as Goods checker in March 2010 by the canteen management of headquarter Delhi area Taurus Shopping Arcade in station canteen, Delhi Cantonment. The appointment letter dated 18.03.2010 was issued to him and the agreed remuneration per month was 6000/- . The said appointment was for a period of 9 month i.e upto 18.03.2011. Again by letter no. 31.12.2011, his employment was extended for one year i.e from 31.12.2011 to 30.11.2012. Though the emolument was the same, this time his appointment was as the Driver. Thereafter by letter dated 03.04.2013 his contract as the driver was extended for a further period of 1 year i.e from 03.04.2013 to 02.03.2014 and the emolument was fixed at Rs. 8008/- per month. Thereafter, on 10.03.2014 the mgt again extended the contract of the claimant as the Driver for a further period of 11 months w.e.f 10.03.2014 to 09.2.2015 on fixed emolument @ of 8918/- p.m. When the workman was performing his duties with utmost care and sincerity without giving any scope of complaint, on 11.01.2015 he was served with a show cause notice by the mgt on the basis of complaint received from Major Manish Narayan on 10.1.2015. The claimant submitted the written show cause intimating that on 10.01.2015 he was at the gate of the canteen as the guard when Major Manish Narayan visited CSD canteen with his family. Since, it was the closing time for the canteen the workman informed him the same. But the officer asked him to open the gate and allow him and his family into the canteen. Major Manish Narayan being aggrieved and lodged a complaint against him. The show cause filed by the claimant was perhaps founds satisfactory and thus the mgt took no action against him. While the matter stood thus on 09.02.2015, the mgt asked 17 employee including the claimant working on contract basis to go on a compulsory one month leave. The said direction was compiled by the claimant and others. On 07.03.2015 all the 16 employees except the claimant were allowed to join but the mgt refused to take back the claimant for work. The decision was taken to punish the claimant for the baseless complaint received from Mj. Manish Narayan, Thereby an order of dismissal dated 08.02.2015 was served on the claimant dismissing him from service under the title expiry of contract. Being aggrieved the claimant gave representation to the higher officials but the same was not considered. The mgt while terminating his service did not comply the provisions of the ID.

Act. No notice of termination, notice pay or termination compensation was paid to him. Since, the action of the mgt in terminating his service was illegal and unjust and arbitrary the claimant raised a dispute before the Labour commissioner for redressal of the grievance . The attempt for conciliation failed and the claimant filed this petition invoking the provisions of Section 2 A of the ID. Act. In the claim it has been prayed that a direction be issued to the mgt to reinstatement him into service with all consequential benefits and the order of dismissal be set aside.

The mgt when served with the notice appeared and filed the written statement denying the stand of the claimant. The maintainability of the proceeding has been challenged on the ground that this is not a case of termination of service of dismissal but disengagement on expiry of the contract. Hence, the application filed u/s 2 A is not maintainable. It is also stated that the claimant having not being retrenched or dismissed from service he is not entitled to the notice pay, retrenchment compensation etc as claimed by him. The other stand taken by the mgt is that the claimant alongwith others were engaged purely on contract basis and the said contract was for a fixed term. According to the exigencies he was given new appointments on the basis of new contract. On expiry of the last contract the mgt by letter dated 08.02.2015 had given due intimation to the claimant. His engagement was never continuous but intermittent. During the intervening period the claimant was never unemployed but gainfully employed. The claim statement is liable to be dismissed as it is not a case of termination but denial of reemployment of new contract. It has been stated that the claimant was initially appointed as a good checker from 19.03.2010 to 18.03.2011. After expiry of the terms of the contract his service was automatically terminated. He was again appointed as a Driver after a gap of 10 months i.e on 31.12.2011 for a period of one year. After that period he was reemployed for another period of 1 year i.e from 31.12.2011 to 30.12.2012. Again on 3.4.2013 he was appointed as a Driver for a period of 11 months. Thus, the engagement of the claimant was never continuous nor he had worked continuously in the establishment of the management. That being the position the claimant is not entitled to the benefits he has prayed for.

The claimant filed rejoinder denying the stand of the management. It has been stated that he was in continuous employment of the mgt though the contracts were renewed from time to time and the claimant was appointed sometimes as good checker and sometimes as driver.

On these rival pleadings following issues were framed for adjudication:

ISSUES

1. Whether the termination of the workman is just and proper, if so its effect?

2. Whether the claim is maintainable, if so its effect?

3. Whether the present claim is covered under the provision of Section 2 (oo) (bb) of ID Act. 1947?

4. To what relief the claimant is entitled to?

During the hearing the claimant testified as WW1 and produced a series of documents marked as Exh. WW1/1 to Exh. WW1/9. The documents includes the appointment letter issued to the claimant on different dates which are marked as WW1/1 to WW1/5, the copy of the complaint made by Major Manish Narayan the show cause notice, the reply to the show cause notice, the letter dated 8.02.2015 by the mgt to the claimant intimating him about the expiry of the contract, his show cause etc. On behalf of the mgt one of the officers of Taurus Station Canteen testifies as MW1. No document has been filed by the mgt witness. Both the witnesses are cross examined at length by their adversaries.

At the outset of the argument the Ld. A/R for the management submitted that the entire claim is based upon misconception of facts. The claimant was neither a regular employee nor his service was terminated entitling the claimant to invoke the provision of Section 2 A of the Id. Act. It is a case simpliciter non engagement after expiry of the contract. The Ld. A/R for the workman on the contrary submitted that the claimant is a young person and had worked in the canteen of the mgt from March, 2010 to 09.02.2015. His last drawn emolument per month was 8918/- . The mgt while filing w.s has clearly admitted about non compliance of provision of 25 F, 25 H and 25 N of the ID Act. The same amounts to unfair labour practice meted to the claimant and he is entitled to the relief of reinstatement with back wages as the mgt is having vacancies and the juniors to the claimant have been reappointed.

FINDINGS

Issue No. 1 and 3.

Since the claimant has alleged illegal termination and the management has counter the same saying that the claimant was not reappointed after expiry of the contract , it has became expedient to examine the nature of the employment of the claimant with the mgt. Before looking into the evidence it is necessary to examine the provision of law section 2(oo) defines retrenchment which means termination by employer of the service of a workman for any reason whatsoever, otherwise then as a punishment inflicted by way of disciplinary action but

doesnot includes as stated in clause (bb) the termination of service of the workman as a result of the non renewable of the contract of the employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein.

In this case it is a specific stand of the mgt that the claimant was not reemployment after expiry of contract and it was duly intimated to him. The said letter of intimation has been marked by the claimant as Exh. WW1/8. The document is in the nature of intimation to the claimant that his contractual engagement will expire on 9.2.2015 and he will be relieved at 5 p.m of the said date. The claimant has filed the letters of his engagement as Exh. WW1/1 to WW1/5. From these letters it is noticed that the claimant was interviewed on 13.02.2009 and appointed as goods checker on a probation period of 3 months starting from 19.02.2010. In Ex. WW1/1 it was specifically mentioned that on successful completion of probation he will be employed on contract basis for a further period of 9 months. On 19.06.2010 he was appointed for a period of 9 months i.e upto 18.03.2011. The document marked as WW1/3 shows that after a gap of 10 months he was given appointment on 31.12.2011 for a period of 1 year ending on 30.11.2012. Again after a gap of 4 month on 3rd April, 2013 he was given another contract of employment for a period of 11 month w.e.f 3rd April 2013 to 2nd March, 2014 on the monthly remuneration of Rs. 8008/-. This time his appointment was as a driver. Again after a gap of few days he was appointed as a driver from 10.03.2014 to 9.02.2014 as driver on a monthly remuneration of Rs. 8918/-. The statement of the mgt in the w.s as well as by the MW1 finds corroboration from these documents to the effect that the claimant was never appointed on contractual basis continuously but he was given engagement pursuant to different contract for specific period. His service was never continuous. The cases of the claimant thus vary well false within the exceptional clauses of Section 2 (oo) of ID. Act. The cessation of work of the claimant by the management cannot be held as termination of service or retrenchment of service. The claimant while signing the agreement was very much aware that his engagement is for a fixed term and co terminus with the termination of the contract. Hence, it is concluded that the service of the claimant was never terminated nor he was retrenched from service. Rather the case of the claimant falls under the provision of Section 2(oo) and (bb) of the ID. Act. These two issues are accordingly answered against the claimant.

Issue No. 1 and 4.

The witness examine by the management has stated in clear terms that the service of the claimant was never terminated. When his contract of employment came to an end he was duly intimated by the letter dated 8.02.2015. The said letter has been exhibited by the claimant as WW1/8. The Ld. A/R for the mgt while drawing the attention of this tribunal to the provision of section 25 F and 25 N of the Id. Act submitted that the said provision apply as condition precedent to retrenchment. The case of the claimant doenot fall under the category of retrenchment but a case of non –renewable of contract. Hence, the provision of section 25 F and 25 N were not applicable in the case of the claimant The document filed by the claimant as WW1/1 to WW1/5 clearly shows that he was appointed not continuously but intermittently. Hence, the question of working for 240 days doesnot arise which applies to continuous service rendered by the workman. Hence, it is concluded that the claim filed under section 2 A of the ID. Act is not maintainable and the claimant is not entitled to the relief sought for. Hence ordered.

ORDER

The claim filed by the claimant be and the same is dismissed on contest for want of merit. The claimant is held not entitled to the benefits sought for.

Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 8 मई, 2023

का.आ. 753.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कार्य महानिदेशक, सीपीडब्ल्यूडी, निर्माण भवन, नई दिल्ली ; कार्यपालक अभियंता, वातानुकूलन प्रमंडल-5 सीपीडब्ल्यूडी, विद्युत भवन, नई दिल्ली,के प्रबंधतंत्र के संबद्ध नियोजकों और श्री जितेन्द्र सिंह,कामगार , अखिल भारतीय केंद्रीय पीडब्ल्यूडी (एमआरएम) कर्मचारी संगठन (रजि.), बलबीर नगर एक्सटेंशन, शाहदरा, दिल्ली, के

बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-2 नई दिल्ली के पंचाट (संदर्भ संख्या 158/2015) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 06.05.2023 को प्राप्त हुआ था।

[सं. एल- 42025/07/2023-80--आई आर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 8th May, 2023

S.O. 753.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 158/2015) of the Central Government Industrial Tribunal cum Labour Court - II New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The Director General of Works ,CPWD, Nirman Bhawan , New Delhi ; The Executive Engineer, Air Conditioning Division-5 CPWD, Vidyut Bhawan, New Delhi, and Shri Jitender Singh , Worker, Through- All India Central PWD (MRM) Karamchari Sangathan (Regd), Balbir Nagar Extention, Shahdra, Delhi, which was received along with soft copy of the award by the Central Government on 06.05.2023.

[No. L- 42025/07/2023-80-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI.

Present: Smt. PRANITA MOHANTY, Presiding Officer, C.G.I.T.-Cum-Labour Court-I, New Delhi.

INDUSTRIAL DISPUTE CASE No. 158/2015

Date of Passing Award- 19th April,2023

Between:

Shri. Jitender Singh S/o Sh. Om Prakash, Lift Operator,
C/o All India Central PWD (MRM)
Karamchari Sangathan (Regd),
House No. 4823, Gali No. 13,
Balbir Nagar Extention,
Shahdra, Delhi-110032 ….Workman

Versus

1. The Director General of Works
CPWD, Nirman Bhawan
New Delhi
2. The Executive Engineer
Air Conditioning Division-5
CPWD, Vidyut Bhawan,
New Delhi …..Managements.

Appearances:-

Sh. Satish Kumar Sharma. Ld. A/R for the claimant
Sh. Avtar Kaur Dingra, A/R for the management

AWARD

This is an application filed u/s 2- A of the ID Act by the workman against the managements praying a direction to the managements to reinstate the workman into service with full back wages and all other consequential benefits.

As per the claim statement the claimant was engaged to work as a Lift Operator in the premises of the mgt CPWD at Asia House Curzon Road and Foreign Affair Building New Delhi with effect from 12.05.2013

through a contractor. The contractor engaged for hiring the service of the workman was changed from time to time but the workman continued to perform his duty till 10.05.2014. He was performing duty in a 12 hour shift at both the places without break. But he was not getting the minimum wage notified by the Govt. and all other statutory benefits like overtime allowance, leave etc. On account of the same, the workman was often raising demand, which caused annoyance in the mind of the mgt CPWD. Hence, the JE of CPWD by an oral order illegally terminated his service on 11.05.2014. At the time as such termination, the provisions of section 25F of the ID Act was not followed. Though his appointment was through the contractor, he was in fact serving under the mgt CPWD and performing the duty of Lift Operator in the establishment of the mgt which is a part of their primary and obligatory service. The mgt CPWD is having regular sanctioned posts of Lift Operator and regular employees are working in such posts all over India and enjoying the benefits of regular employees. Once the claimant had raised a dispute about the minimum wage before the appropriate authority and the mgt CPWD appeared before the said authority and informed that the claimant has been engaged through the contractor and all the benefits he is entitled to shall be granted. But CPWD did not stick to the same. The representation filed by him was not replied. When the matter stood thus, the mgt terminated his service and the claimant made a representation to the Executive Engineer CPWD Vidyut Bhawan requesting reinstatement. As no action was taken the claimant approached the union which too took up the matter. But no fruitful result could be achieved. Finding no other way the claimant raised a dispute before the conciliation officer and during the hearing before the Conciliation Officer, it was intimated that the claimant has taken full and final settlement from the mgt which was a false statement. For the failure of the conciliation, the claimant filed the present claim petition asserting that he was engaged directly under principal employer CPWD and performing the duties under the supervision and control of the JE/AE of CPWD. Hence, for the illegal termination of his service the mgt be directed to reinstate him into service with back wages and also to regularize his service from the date of his initial employment with regular pay and other benefits at par with the regular counter parts.

The mgt CPWD being noticed, filed written statement denying the stand taken by the claimant. It has been stated that CPWD is an office functioning under the Ministry of Urban Development and it has it's own rules and regulations for appointment of the employees. The regular employees of CPWD are governed by CCS regulation and statuary instructions issued by DOPT. The claimant was never appointed by the mgt CPWD and as such, his claim for regularization for service and reinstatement with back wages is baseless. It has been specifically stated that the CPWD, following the codal procedure awards contract to different contractors for execution of specific nature of work. The said contractor after entering into the contract, engages persons to accomplish the work. The persons engaged by the contractor are the employees of the said contractor and can never be construed as the employees of CPWD. For all purposes, the contractor is the principal employer of the persons engaged by him. The mgt has admitted that claimant was appointed as a Lift Operator on 12.05.2013 by M/s Akash Enterprises and he was working under one shift at Asia House. The said area was earlier not under the supervision of the answering mgt. It was under ECD-VII division of CPWD. The said site was transferred to ACD-V on 09.09.2013. As per records available the claimant was initially engaged through M/s Akash Enterprises who was awarded a contract for 8 months i.e. from 12.12.2012 to 23.09.2013. Thereafter, another contractor namely M/s Guruji Elevator was awarded with the contract. But the claimant continued to work as the Lift Operator in Asia House and performing the duty on shifts. On exceptional circumstances and with his consent, he was working for 12 hours. While matter stood thus on, 11.05.2014 the contractor was asked to change the duty of the claimant from the said site as there were reports about his anti-social behavior and the Resident Welfare Association had doubt with regard to the involvement of the claimant on the repeated occasions of theft. One police complaint and enquiry was also made against the claimant. The CPWD in order to retain it's image asked the contractor who was the employer to change the location of the claimant from that site. But the claimant refused his relocation to the other site and accepted his full and final settlement from the office of the said contractor on 12.05.2015. He also signed the papers relating to his full and final settlement without any pressure from any quarters. The claimant had never made any allegation with regard to non payment of minimum wage to him by the contractor or denial of the statutory benefits. The mgt CPWD only came to know about the grievance of the claimant after getting notice of this proceeding. Thus the mgt has stated that the claim filed by the claimant against CPWD is not maintainable and he is not entitled to the relief sought for.

In the written replication the claimant stated that after the contract labour prohibition notification, neither the mgt CPWD got itself registered under section 7 of the CLRA Act nor the so called contractor has license in terms of section 12 of the said Act. The claimant, since was discharging duty in connection with the affairs of the mgt and in the premises of the mgt under it's supervision and control, he is entitled to the relief and be treated as the employee of the mgt CPWD.

On these rival pleadings the following issues were framed for adjudication

Issues

1. Whether there exists employee and employer relationship between the workman and the mgt? if so its effect.
2. Whether the contract system in this case is sham and camouflage ? if so it's effect.
3. Whether the claim is barred by time? If so, it's effect.
4. Whether workman Sh. Jitnder Singh is entitled to reinstatement in service with full back wages since he is alleged illegal termination? If so its effect.
5. Whether workman is entitled to regularization of service with effect from the initial date of appointment with regular pay and allowances?

The claimant examined himself as WW1 and relied upon the document marked as WW1/1 to WW1/7. These documents include the log books allegedly containing the signature of the JE some documents relating to repair of the elevator by the engineers in which the signature of the claimant was taken as the customer, the ID card issues to the claimant by the contractor and the bill raised by the contractor. On behalf of the mgt one Narender Kumar, executive engineer testified as MW1. While supporting the averments made in the w.s, he described the claimant as a person engaged through the contractor for discharging the duty of lift operator. He has also relied upon few documents which include the contract entered between the CPWD and contractor namely M/s. Guruji Elevator and M/s. Akash Enterprises. He has also filed the copy of the log books maintained by M/s. Guruji Elevator and M/s. Akash Enterprises the contractors engaged for the work. With this the witness has stated that the claimant was never the employee of CPWD and there was no need for registration under the CLRA as at no point of time more than 20 persons were ever engaged by CPWD in the work of lift operator. Both the witnesses were cross examined at length by their adversaries.

At the outset of the arguments, the Ld. A/R for the claimant submitted that this is a typical case of unfair labour practice meted to the claimant. He was engaged in the premises of the mgt to act as the lift operator and the mgt after the abolition of the contract labour system had never registered itself under CLRA for engagement of contract labour. The agreement between the mgt and the contractor is sham and intended to camouflage the legal rights of the claimant. On the other hand, the Ld. A/R for the mgt argued that there was valid and legal contract between the mgt CPWD and the contractors for operation of the lifts. As a part of the work assigned the contractor had engaged manpower and the claimant being engaged by the contractor for execution of the work assigned to the contractor, has not relationship with CPWD. The ld. A/R for the mgt submitted that the claimant in a mischievous move had obtained the photo copy of the log books unauthorizely. But the said log books and the payment made by the contractor towards his full and final settlement clearly proves that he was a n employee of the contractor.

Finding

Issue no 1,2&5

All the issues being inter dependent are taken up for consideration together..

In his pleadings the claimant had admitted at one point of time that he was employed through the contractor M/s Akash Enterprises. At the other point he has stated that he was the employee of CPWD and getting the remuneration in cash from the JE. Except the log book containing the signature of the JE at some placed no other documents have been filed by the claimant to establish a connection between him and the mgt CPWD as it's employer. The I-Card produced by him and exhibited was also issued by the contractor. The mgt has filed the contract document entered between CPWD and Akash Enterprises and CPWD and Guruji Elevators which proves that there was a valied contract between the said contractor and CPWD. No evidence has been filed and adduced by the claimant to prove that the said contract was sham and intended to camouflage the right of the claimant. A mere pleading cannot substitute or take place of evidence. In this case, the mgt has stated that for some reason the contractor was asked to relocate the claimant form the site of CPWD at Asia House to Parliament Street. But the claimant refused the proposal and took his full and final settlement. But the claimant has denied the same. It has been described that the said amount of Rs.52,137/- was paid towards arrear minimum wages.

The evidence adduced by the parties and the stand taken by them made it imperative on the part of this tribunal to examine if the claimant, who was admittedly employed through a contractor can maintain a dispute against the mgt CPWD. The law contained in Section 10 of the CLRA 1987, provides for prohibition of employment of contract labour. As per the said provision, the appropriate Govt. in consultation with the Central Board prohibit by notification the employment of contract labour in any process operation or other work in any

establishment. While doing so the govt. shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and the relevant factors are:

A. Whether the process operation or other work is incidental or necessary of the industry or the business carried on in the establishment.

B. Whether the work is up perennial nature.

C. Whether it is ordinarily done through regular workman of that establishment.

From the said provision it is evidently clear that the appropriate Govt. may make notification prohibiting employment of contract labour in any establishment. Then the question arose what shall be the status of the contract labour employed in the establishment. The question was decided by the Hon'ble Apex Court in the case of Steel authority of India (2001(7)) SCC1) the apex court ruled that there cannot be automatic absorption of contract labour by principal employer or issuance of notification of the govt. It was further held that after prohibition notification issued, if any industrial dispute is brought before the Tribunal or court, the industrial adjudicator has to consider whether the contractor has been interposed either on the ground of having undertaken to produce any given result in the establishment or for supply of the contract labour for the work of the establishment under a genuine contract or it is a mere ruse/camouflage to evade complains of beneficial legislation so as to deprive the workers of the benefits therein. In the said judgment of **Steel Authority of India,** it has also been held where a workman is hired in or in connection with the work of a establishment by the principal employer through a contractor, he merely acts as an agent. So there will be master and servant relationship between the principal employer and the workman. But when the workman is hired in or in connection with the work of an establishment by a contractor either because he has undertaken to produce a given result for the establishment or because he supplies workman for any work of the establishment the persons were employed shall be the employee of the contractor.

In this case, the claimant, as admitted by him was engaged as the Lift Operator through the contractor and the mgt CPWD has produced documents to prove the valid contract entered between the contractor and the mgt for execution of the work. Since the claimant was engaged by the contractor for accomplishment of the work assigned to the contractor, it cannot be construed that the claimant was engaged for the work of the establishment CPWD and an employee of CPWD. In this case the claimant ha s not adduced any evidence to prove that he was working under the supervision and control of the mgt or getting remuneration directly from the mgt. Though he had made an oral statement about the remuneration received by cash from JE, neither any document has been produced nor called for by the claimant. He had worked for a period of one year only as lift operator through two separate contractor who were awarded the work by CPWD. In absence of proof on the employee employer relationship and in absence of evidence to the effect that the claimant was working under the supervision and control under the mgt CPWD it is held that the claimant had failed to prove his relationship as the employee of CPWD. The contract entered between CPWD and the contractor in absence of proof to the contrary, is held to be genuine and not sham. The claimant is held not entitled to reinstatement or regularization of service. All the issues are answered against the claimant. Hence ordered

The claim be and the same is dismissed on context. The claimant is held not entitled to the benefit prayed for.

Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 8 मई, 2023

का.आ. 754.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार नई दिल्ली नगरपालिका, परिषद, पालिका भवन, संसद मार्ग, नई दिल्ली,के प्रबंधतंत्र के संबद्ध नियोजकों और श्री उमाकांत मालाकार, कामगार , द्वारा एनडीएमसी जनरल मजदूर यूनियन शाहजहाँ रोड, नई दिल्ली, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-2 नई दिल्ली के पंचाट (संदर्भ सं. 53/2019) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 06.05.2023 को प्राप्त हुआ था ।

[सं. एल-42011/247/2018 -आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 8th May, 2023

S.O. 754.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 53/2019) of the Central Government Industrial Tribunal cum Labour Court - II New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to New Delhi Municipal, Council, Palika Bhawan, Parliament Street, New Delhi, and Shri Umakant Malakar, Worker , Through NDMC General Mazdoor Union, Shahjahan Road, New Delhi, which was received along with soft copy of the award by the Central Government on 06.05.2023.

[No. L- 42011/247/2018 -IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI.

Present: Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 53/2019

Date of Passing Award- 25th April, 2023

Between:

Sh. Umakant Malakar,
Through NDMC General Mazdoor Union,
Room No. 95, Barrack No. 1/10 , Jam Nagar House,
Shahjahan Road, New Delhi-110011. ….Workman

Versus

New Delhi Municipal Council,
Palika Bhawan, Parliament Street,
New Delhi-110001.

Appearances:-

Shri B. K Prasad, (A/R)	For the claimant
Shri Raghvendra Úpadhaya (A/R)	For the Management

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of NDMC, and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-42011/247/2018 (IR(DU) dated 12.02.2019 to this tribunal for adjudication to the following effect.

> **"Whether the workman is entitled to be reinstated on the post of MALI w.ef 15.11.2014 (date of termination) with full back wages alongwith all consequential benefits including regularization in the category of unskilled workman ? If so, what relief the workman concerned is entitled to?"**

As per the claim statement, the claimant is a visually impaired person had met the Secretary of New Delhi Municipal Corporation on 02/03/2013/ during the public hearing and the secy, considering his physical impairment, allowed him to work as a Mali w. e. f. 04.03. 2013 against the post reserved for employment of physically handicapped persons. Thus the claimant started working as a Mali in the office of the Management at Laxmibai Nagar. No appointment letter was issued to him by the Management. Initially he was paid the remuneration in cash by putting signature on revenue stamps. Subsequently, he was granted the employee code No and since then the Management transferred his remuneration to his Bank account maintained with State Bank of India. But on 15.11.2014, the management without assigning any reason terminated his employment and while doing so the provisions of ID Act as provided u/s 25F, 25G and 25H were not followed. The juniors to the claimant were retained, whereas the service of the claimant was terminated. He made several representations to the management praying reinstatement, but those were not considered. Finding no other way

out he approached the union and the union after proper espousal raised a dispute before the labour commissioner. Before the said commissioner, the management appeared and filed objection to the stand taken by the claimant. Attempt was made for conciliation of the dispute, but no fruitful result could be achieved. Hence, for failure of conciliation, the appropriate Govt. referred the matter for adjudication in terms of the reference. The claimant has stated that he has passed the examination of 10th standard from CBSE and has been granted a certificate from the appropriate authority for his 100% visual impairment. His candidature should have been considered as a special case by the Management for the order issued by DOPT reserving 3% of the vacancies for physically handicapped persons. Hence a prayer has been made for a direction to the management to reinstate him into service with full back wages from the date of his illegal termination describing the same as an unfair labour practice.

The management filed WS denying the claim advanced by the claimant. It has been pleaded that the claimant is neither a workman nor the management an Industry. The claimant was never working as a Mali w. e. f. 04.03.2013 as claimed by him. He was working as a Temporary Muster Roll Employee to do the work as and when required. His engagement was purely on need basis and was being done on the approval of the appropriate authority. The management took a policy decision for appointment /regularization of TMR/ RMR/ Contractual/ Casual Employees working for the management. As per the said decision, the workmen who had completed 500 days of work as on 31.01.2014 were conferred the status of Regular Muster Roll Employees. Since the claimant had not completed 500 days of work, his case was kept out of consideration. More over the claimant cannot be granted the relief as claimed since he was never appointed as a Mali which is a regular post on account of his physical impairment. With this the management has prayed for dismissal of the claim.

On these rival pleadings the following issues were framed.

ISSUES

1-Whether the proceeding is maintainable.

2- Whether the termination of the workman is illegal.

3-Whether the workman is entitled to the relief of reinstatement in the post of Mali with full back wages.

4- To what other relief, the workman is entitled to.

The claimant testified as WW1 and filed some documents marked as WW1/1 to WW1/ 6. The documents are the certificate of educational qualification and disability of the claimant issued by the appropriate authority. He has also filed the order of DOPT relating to 3% reservation of posts for physically handicapped persons. Along with this he has also filed the copy of the failure report of conciliation and the resolution of espousal by the union and the representation to the management for reinstatement. At the stage of argument the claimant also filed the copy of the written statement filed by the management before the conciliation officer with the annexure which is the No of days as per the management the claimant had worked as TMR. To supplement the work man has also filed a calculation sheet of working days spent by the claimant as RMR.

On behalf of the management one Jitender Kumar, Deputy Director of Horticulture, NDMC testified as MW1. No document has been placed on record by the Management to support the stand taken in the WS.

At the outset the learned AR for the management submitted that the claimant is not sure about his own stand. In the claim petition he has claimed to have been appointed as a Mali, which is a permanent post in the Management. In the evidence he has claimed benefit for having worked for more than 240 days in a calendar year. While relying on several judgments of the Hon'ble SC including the case of Hindustan Aeronautics Ltd vs Ds Bahadur SinghCA No 2195/2007 decided on 27/04/2007, he argued that the Law is well settled that merely because a person has worked in establishment for 240 days, a right is not created in his favour for regularization. The Hon'ble Appex court have held that the concept of 240 days was to put a restriction on the employer and prevent illegal termination. He also argued that no document or other evidence has been filed by the claimant to prove that he was employed by the management and his service was illegally terminated. It has been argued that the allegation that the juniors were retained but the claimant's service was terminated is also wrong. The management took a policy decision to confer the status of RMR to those TMR who have worked for 500 days or more as on 31/01/2014. Since the claimant could not qualify in terms of the days of work he was not upgraded to the cadre of RMR.

The counter argument advanced by the claimant is that he had worked for more than 500 days as TMR as on 31/01/2014. But he was subjected unfair labour practice by the management. In view of the admission of facts by the management in the WS filed before the conciliation officer and before this Tribunal, the claimant cannot be faulted for not adducing adequate evidence.

FINDING

Issue no 1

The claimant has filed a document relating to espousal of the dispute by the Union. The document marked as WW1/6 has not been challenged by the management. The other challenge is that the claimant is not a workman as defined u/s 2 s of the ID Act. This provision defines" workman "to be a person employed in any Industry for work on hire or reward, may be skilled, unskilled technical or manual work, subject to the conditions mentioned there under. It does not distinguish between regular or temporary workers. This argument as advanced by the management is held not acceptable and accordingly answered in favour of the claimant.

Issue No 2&3

The grievance of the claimant was that considering his impairment, the secy. of the management ordered for his engagement on 02/03/2013 as a Mali and he started working in the office of the Management at Laxmi Nagar. During cross examination he has stated that the nature of the work discharged by him was similar with the regular employees. His job included watering the plants etc, which is basically the job of the Mali. It is true that all along the claimant has stated that he was appointed as a Mali and taking advantage of the same the management has stated that the claimant is illegally demanding the job of a permanent employee and the claim is not supported by any document.

The WS filed by the Management clearly contains the admission of that the claimant was appointed as a TMR by the Management. A similar statement was also made in the WS filed before the conciliation officer which has been filed by the claimant. The management has also admitted that as the TMR an employee code was allotted to the claimant. The statement of the claimant that with reference to the code allotted to him management was making payment in his SBI account has not been disputed by the management.

The only dispute is about the termination of service of the claimant. Whereas the claimant has stated that he had worked for more than 240 days in a calendar year and management terminated his service without complying the provisions of 25F 25 G and 25H of the ID Act, the stand of the management is that for the nature of the engagement which was intermittent and need based, the provisions of ID Act needs no compliance. The management has further stated that a decision was taken by the management to regularize the service of TMR and confer on them the status of RMR ,if a person had worked for 500 days or more before 31.01.2014 as TMR. The claimant could not qualify the standard and there being no work for him his engagement was not extended as was done earlier. The management has disputed the initial date of engagement as stated by the claimant to be 04/03/2013. According to the management the claimant had started working on 18.06.2013 at Laxmi Bai Nagar and as per the available records he had worked for 381 days only as on 15.11.2014. Hence he was not considered for conferment of the RMR status. Though the statement the management is based on available records, surprisingly neither with WS nor while examining the Deputy Director as a witness , the related records were not produced no explanation regarding the same has been offered.

Argument was advanced by the management that I is incumbent upon the workman to prove that he had worked for a particular No of days to get the benefit under law. In this case the claimant has failed to prove the same. This argument of the management sounds not convincing as the claimant of this proceeding is a visually impaired person fighting the litigation against the mighty employer. There is no dispute on facts that the management has referred to the documents available in their office, relating to the days of work done by the claimant and basing on the said record, claimant was denied the status of RMR. In such a situation, it is the management which could have filed the records for disputing or disproving the stand of the claimant. On the other hand the claimant has filed a calculation showing the no of days year wise and month wise he had worked in the establishment f the management.

In the case of **Gopal Krishanaji Ketkar vs Md Haji Latif and others, AIR 1968 SC 1413, the Hon'ble SC** have held that the burden of proving a fact is on the management as the party in possession of the evidence. It can not rely on the abstract doctrine of onus of proof to disown the responsibility. The same view was later taken by the Hon'ble High Court of Punjab and Haryana in the case of **BalKishan vs Presiding Officer, 1996 (3)SCT,548 and Ramesh Kumar vs P O Industrial Tribunal Panipat & another ,2018 LLR 1229.**Thus in absence of documents which are in the custody of the management, this Tribunal has no hesitation in accepting the claim of the claimant that he had worked for the required No of days entitling him to the benefits granted to his co workers and it is also held that the stand of the management that the claimant having not worked for 500 days preceding to 31.1.2014 was not considered for appointment as the RMR is held unfounded.. The denial by the management to grant the benefits to the claimant at par with the co workers standing in the same footing amounts to unfair labour practice.

Now it is to be examined, what relief the workman is entitled to. The learned AR for the management by drawing attention to the judgment of the Hon'ble SC in the case of D.K. Yadav vs J.M.A Industries Ltd, 1993, LLJ II, 696, submitted that the Hon'ble SC have held that the termination of service of a person not only impacts his livelihood but also the carrier and livelihood of the dependants. In this case the claimant a visually

impaired person was earning his livelihood from the employment with the management. The claimant as a witness has stated that he is having the wife and four children as dependents and he is unemployed since the date of termination of his service and does not have any other source of income. In view of the evidence, it is felt expedient in the interest of justice to issue a direction to the management to confer him the status of RMR w.e.f. 23rd September 2014 , when persons standing in the same footing, by office order No I/c CGIT Cell/248/H.A dt 23rd Sept 2014,were conferred the RMR status on Group D and grant him all consequential benefits including the remuneration. These two issues are accordingly decided in favour of the claimant.

ISSUE No 4

In view of the finding arrived in respect of issue no2&3, the claimant is held not entitled to any other relief except as mentioned in the preceding paragraph. Hence ordered.

ORDER

The reference be and the same is answered in favour of the workman. It is held that the claimant workman is entitled to the status of RMR w.e.f. 23rd September 2014 , when persons standing in the same footing, by office order No I/c CGIT Cell/248/H.A dt 23rd Sept 2014,were conferred the RMR status on Group D and grant him all consequential benefits including the remuneration. The management is further directed to induct the claimant into the list of RMRs within one month from the date of publication of the award and pay him the financial benefits including the arrear and other consequential benefits within a further period of one month. The arrear shall be paid with a nominal interest of 3% from the date of accrual as the claimant, for the unfair labour practice meted to him, is fighting the litigation since 2014, in different forums. If the amount as directed, would not be paid within the time stipulated, the same shall carry interest @6% from the date of accrual and till the final payment is made.

Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 8 मई, 2023

का.आ. 755.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महाप्रबंधक, भारतीय राष्ट्रीय साइकिल निगम,हिंद नगर, गाजियाबाद, (यू.पी), के प्रबंधतंत्र के संबद्ध नियोजकों और महासचिव, सीडब्ल्यूसी मजदूर यूनियन, राजीव नगर कॉलोनी, चारहोली एक्सटेंशन पूर्वी दिल्ली, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-2 नई दिल्ली के पंचाट (संदर्भ संख्या 57/2015) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 06.05.2023 को प्राप्त हुआ था।

[सं. एल-42011/5/2014 -आई आर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 8th May, 2023

S.O. 755.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 57/2015) of the Central Government Industrial Tribunal cum Labour Court - II New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The Managing Director,Central Warehousing Corporation,Inland Container Depot Near Gazipur Village, Patparganj Delhi; Suman Forewarding Agency Pvt. Ltd. CD, Near Gazipur Village, Patparganj.Delhi, and The General Secretary,CWC Mazdoor Uinon, Rajiv Nagar Colony, Charoli Ext East Delhi, which was received along with soft copy of the award by the Central Government on 06.05.2023.

[No. L- 42011/5/2014-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI.

Present: Smt. PRANITA MOHANTY, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 57/2015

Date of Passing Award- 10th April, 2023.

Between:

The General Secretary,
CWC Mazdoor Uinon,
B-1/200, Gali No.1 Rajiv Nagar Colony,
Charoli Ext East Delhi-110096 ….Claimant

Versus

1. The Managing Director,
Central Warehousing Corporation,
Inland Container Depot Near Gazipur Village,
Patparganj Delhi- 110096

2. Suman Forewarding Agency Pvt. Ltd.
ICD, Near Gazipur Village,
Patparganj.Delhi-110096 ….Managements

Appearances:-

None for the Claimant.
Sh. Ashok Kumar, Ld. A/R for the management.

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of(i) The Managing Director,Central Warehousing Corporation,,(ii) The Regional Manager,Central warehousing Corporation,(iii) The Manager, Aqdas marititime Agency Pvt. Ltd. (iv) The Manager, Suman Forewarding Agency Pvt. Ltd. and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-42011/5/2014(IR(M)) dated 30/10/2014 to this tribunal for adjudication to the following effect';

"Whether the engagement of contractors in the establishment of Central Warehousing Corporation for the work of loading/unloading & stuffing/De-stuffing can be considered as Sham and Camouflage? If yes, whether non-regularization of workmen in the establishment of Central Warehousing Corporation is just, fare and legal? If not, what relief the workmen concerned (202 workmen) are entitled to?"

As per the claim statement, the Management CWC is a statutory corporation established under the statutory corporation Act 1962. It maintains warehouses to store and facilitate transportation of agricultural products, seeds, manures, fertilizers, agricultural implements and other notified commodities offered by individuals and organizations. In order to fulfill the obligation and carry out it's business , it has constructed 15 godowns and 1 yard a t Patparganj, in each godown, there are approximately 20 labourers and one packer engaged. The packer also performs the duty of the Godown in charge and opens the cargo box for inspection of the custom authorities and again repacks the same. He performs the duty with the risk of coming in contact with dangerous gas and substance some times as no safety measure is provided by the CWC. The labourers engaged also perform the work which is highly risky without any safety measure. The loading and unloading work of CWC is basically done by the labourers. The nature of the work done by the packers and labourers as loaders and un loaders is of perennial nature as the same is the primary function of CWC.

But the management CWC engages the loaders and the packers through some private agencies/ contractors, who are no other than the name lenders. In fact the workmen discharge the functions directly under the supervision and control of CWC and it's officials and introduction of the contractor is only meant to deprive the workmen of their right for regularization in the service of CWC. All these workers are paid their wages by CWC which by it's officials keeps control and supervision over the work of the workmen. Though the contractors are changed on intervals, the workmen are never changed nor any break in their service is effected. Thus they are continuously and un interruptedly working for the management and each of the workers have completed work for 240 days or more in a calendar year in the establishment of the management. Neither the management CWC is registered under CLRA nor the contractors engaged are having license to engage contract labours. Several representations were made to the management of CWC claiming regularization of service of the workers

working for a long time as some of the workers are working since the year 1985. But no result could be achieved. Hence the workmen through their union approached the Hon'ble High Court of Delhi by filing CWP No 48/2000. The Hon'ble court disposed of ft he CWP by order dt 17/10/2000 observing that the matter be referred to the Central Advisory Contract Labour Board. Accordingly the board heard the matter from both the parties and observed that the workmen are getting much less remunerating in comparison to the regular employees discharging similar nature of work at the other centres of CWC across India. The Govt. as per the observation of the Board issued Notification dt 17/11/2006, abolished engagement of contract labour in the handling and loading unloading of import and export containers. The management CWC challenged the notification by filing WP No 4114/2008 and operation of the notification was stayed. But the claim of the claimants are that they are employed directly by the management of CWC and the contractors are shown as engaged to deprive the workmen of their right for regularization. Having failed in their effort for redressal of the grievance, the claimants through the union raised an Industrial Dispute before the conciliation officer. The attempt for conciliation failed for the non co operation of the management and the appropriate Govt. referred the matter for adjudication in terms of the reference.

Being noticed the management CWC appeared and filed WS refuting the stand of the claimants taken in the claim petition. Besides challenging the maintainability for want of espousal, it has been stated that the CWC is operating the inland clearance Depot at Patparganj under the license issued by the Custom Authorities. The center has to close down on withdrawal of the License as has been done in other centres of CWC. Hence there is no possibility of employing any person permanently or on regular basis at Patparganj Depot. More over for introduction of mechanized transporting, handling, packing etc, the man power requirement has diminished considerably. The business of CWC has also decreased considerably in the current time. The notification prohibiting engagement of contract Labour has been stayed by the Hon'ble High Court. Moreover, the workmen have never worked under the supervision and control of CWC. They are the persons engaged by the contractor awarded with the contract for a specific work and for specific time. Hence the claim of regularization as advanced by the workmen is baseless and liable to be rejected.

On the rival pleadings the following issues were framed for adjudication.

ISSUES

1- Whether the engagement of contractors in CWC for work of loading and unloading & stuffing can be considered as sham and camouflage? If so effect.

2- Whether the non regularization of the workmen in the establishment of CWC is legal, just and fair?

3- Whether the management has challenged the reference order? If not effect.

4- Whether the dispute raised by the workmen through the Union has been properly espoused? If not effect.

5- To what relief the workmen are entitled to and from which date?

The claimants thereafter were called upon to adduce evidence in support of their claim. Several opportunities were allowed for the purpose and for non appearance of the claimants fresh notices were also issued. Despite that when the claimants did not turn up, the opportunity for adducing evidence was closed. Thereafter the management was called upon to adduce evidence. But there being no evidence adduced by the claimants to discharge the burden of proof, the management expressed that no evidence by the management shall be adduced. Hence evidence was closed, argument was heard being advanced by the management.

During argument the learned AR for the management submitted that the burden of proof being on the claimant, they opted not to adduce evidence. Whereas the stand taken in the claim petition has not been substantiated the stand taken by the management stands unrebutted. Hence the claim be decided against the claimants.

On hearing the argument advanced by the management it is held that the claim advanced by the claimants has not been established. Hence a no dispute award is to be passed. Hence ordered.

ORDER

The reference be, and the same is answered against the claimants. The claim having not been established, this no dispute award is passed.

Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 8 मई, 2023

का.आ. 756.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महाप्रबंधक, भारतीय राष्ट्रीय साइकिल निगम,हिंद नगर, गाजियाबाद, (यू.पी), के प्रबंधतंत्र के संबद्ध नियोजकों और श्री चमेल सिंह, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-2 नई दिल्ली के पंचाट (संदर्भ संख्या 40/2011) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 06.05.2023 को प्राप्त हुआ था।

[सं. एल-42011/4/2011 -आई आर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 8th May, 2023

S.O. 756.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 40/2011) of the Central Government Industrial Tribunal cum Labour Court - II New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, National Bicycle Corporation of India,Hind Nagar, Ghaziabad, (U.P.), and Shri Chamel Singh, Worker, which was received along with soft copy of the award by the Central Government on 06.05.2023.

[No. L- 42011/4/2011-IR (DU))]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI.

Present: Smt. PRANITA MOHANTY, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 40/2011

Date of Passing Award- 17.04.2023

Between:

Shri Chamel Singh S/o Sh. Richpal Singh
PO Chipiyana Bujurg,
Gautam Budh Nagar, U.P ….Workman

Versus

The General Manager,
National Bicycle Corporation of India,
Hind Nagar, Ghaziabad, U.P. ….Management

Appearances:-

Shri Kailash, Ld. A/R for the Claimant.
Shri Praveen Sharma, Ld. A/R for the Management.

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of (i) The General Manager, National Bicycle Corporation of India, Hind Nagar, Ghaziabad, U.P. and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-42011/4/2011-(IR(DU)) dated 09/05/2011 to this tribunal for adjudication to the following effect.

"Whether the action of Management of National Bicycle Corporation of India, Ghaziabad, in removing the services of Shri Chamel Singh S/o Shri Richpal Singh, w.e.f. 18/06/1992, is legal and justified? What relief the workman is entitled to?"

This order deals with the grievance of the claimant with regard to the punishment imposed on him in the domestic inquiry whichhe describes as unreasonably disproportionate to the charge leveled against him.

In order to deal with the dispute and the grievance of the claimant it is necessary to set out the relevant facts as per the claim statement in detail.

The claimant was working as a turner in the factory of the management since 16.05.1983.he was involved in the union activities and often raising demand in respect of the legal and legitimate claims of the fellow workers. That had caused displeasure to the Management, which was searching opportunity of framing the claimant and removing him from service. On 01/01.1990, on some false allegations charge was framed against him and a show cause notice was served. The claimant workman submitted reply denying the charge. But the management found the same unsatisfactory and un acceptable. A domestic inquiry was conducted in respect of the said charges. The domestic inquiry was conducted in the most unfair manner in as much as the principles of natural justice were not followed and the documents demanded by the claimant were not supplied. In a pre determined manner the inquiry was closed and the major punishment in terms of removal from service was imposed on him by order dt 18/06/1992. Being aggrieved the claimant raised an Industrial Dispute before the labour commissioner. The effort for conciliation since failed,the appropriate Govt. referred the matter to this Tribunal for adjudication in terms of the reference.

The management filed written statement denying the stand of the claimant. On behalf of the management it was pleaded that the claimant had conducted gross misconduct by his in disciplined behavior at work place. It is not the singular occasion, but a several previous occasions too he was proceeded with punishment for such behavior. Once in the year 1979 and again in the year 1984, his service was terminated. But on both the occasions on humanitarian consideration, the representations of the claimant was allowed and he was re-appointed. But the claimant never tried to mend his behavior. His undisciplined behavior caused disturbance in the work balance of the management. Hence as the last instance the domestic inquiry was conducted against him by charge sheet dt 18/06/1992 and the charge being proved, his service was terminated on 18/06/1992.

In view of the pleadings the following issues were framed for adjudication.

ISSUES

1-Whether the inquiry conducted against the workman was fair and proper?

2-Whether punishment awarded to the claimant commensurates to his misconduct?

3-Whether delay in filing the claim statement frustrates the relevant claim?

4-Whether the Management has closed it's business activities. If so it's effect

5-As in terms of reference.

The Tribunal directed for hearing of issue no 1 as the preliminary issue. Both parties were allowed to adduce oral as well as documentary evidence. On considering the evidence and after hearing argument, the Tribunal by order dt 17/10/2022, came to a finding that the domestic inquiry against the workman was conducted fairly following the principles of natural justice and due opportunity was allowed to him to set up his defence. Thus the parties were called upon to advance argument on the proportionality of the punishment awarded.

As directed both the parties advanced oral argument and also filed written notes of submission which were taken on record.

During course of argument the learned counsel for the management submitted that the inquiry was conducted in presence of the workman and the charge of misconduct was duly proved. This being a case of loss of confidence on the employee, the punishment was appropriately imposed. Drawing the attention to the

exhibited documents and the proceeding of the departmental inquiry, he submitted that the charge has been duly proved against the claimant in this proceeding. Hence the Tribunal should not sit over the punishment imposed as if the appellate authority.

Whereas the learned AR for the Management supported the order imposing punishment as proper, the claimant has described the same as extremely harsh. During course of argument it was pointed out by the AR for the claimant that for the long drawn litigation, the claimant was deprived of contesting the matter properly and now suffering for the illegal order of dismissal. Hence a lenient view may be taken in the matter for deciding the proportionality of the punishment. The counter argument by the learned AR for the management is that it is a case of loss of confidence. The business of the management establishment has been permanently closed for the order passed by the Hon'ble H C of Bombay followed by the decision taken by the Govt. The action of the claimant had visibly impacted the business of the respondent in the past and the respondent establishment having been closed permanently, no modification in the order of punishment is warranted and the claimant workman does not deserve any sympathy.

Now, in view of the arguments advanced by the parties,a finding is to be given on the proportionality of the punishment imposed on the claimant. In the case of **Muriadih Colliery VS Bihar CoallieryKamgar Union (2005) 3 SCC331,**The Hon'ble SC have held

"it is well-established principle in law that in a given circumstance, it is open for the Industrial Tribunal acting u/s 11-A of the I D Act 1947 to interfere with the punishment awarded in the domestic inquiry for good and valid reasons. If the tribunal decides to interfere with such punishment awarded in domestic inquiry, it should bear in mind the principle of proportionality between the gravity of the offence and stringency of the punishment."

Whether a misconduct is severe or otherwise, depends on the facts of each particular case. In a case where the charge is about indiscipline and refusal to undertake the work assigned, no doubt the same is serious in nature and distinguishable from the charge of demeanor or in – subordination. More over it is a matter of record that the claimant, on two previous occasions were proceeded for the misconduct and his service was terminated once on 10.03.1979 and again on 18.06.1992. As stated by the witness examined by the management, he was re appointed on consideration of his representations. The learned AR for the management thus argued that the management on both the occasions had considered the case of the claimant on humanitarian ground. But for the un amended conduct of the claimant, the management lost confidence and imposed the punishment which has been challenged in this proceeding. No explanation has been offered nor there is any evidence adduced by the claimant to believe that the action as stated by the management was not taken against him. The argument that he was made a victim of the vindication on account of his union activities is found not acceptable.

In the case of **Regional Manager U.P. SRTC, Etawah & others VS Hotilal and another,2003(3) SCC 605, reffered in the later case of U.P.SRTC VS Nanhelal Kushwaha(2009) 8 SCC, 772,** the Hon'ble Appex Court have held that "The court or Tribunal while dealing with the quantum of punishment has to record reason as to why it is felt that the punishment inflicted was not commensurate with the proved charge. A mere statement that the punishment is not proportionate would not suffice. It is not only the amount involved ,but the mental set up, the type of the duty performed and similar relevant circumstances, which go into the decision making process are to be considered while deciding the proportionality of the punishment awarded. If the charged employee holds a position of trust where Honesty and Integrity are in built requirements of functioning, it would not be proper to deal with the matter leniently."

As stated in the preceeding paragraph the allegation against the claimant was of misconduct on account of refusal to perform the duty assigned, leading to loss of confidence of the employer on the employee. The management was a factory engaged in manufacturing of Bi Cycles. Machines as well as man power was involved in the process of production. The workman was working as a turner and on the relevant date he was assigned the duty in the lever turning fencing from maintenance by the supervisor. The order was duly received by the claimant, but he refused to perform the duty so assigned.

The learned AR for the management while placing reliance in the case of **M/S Firestone Tyre and Rubber Co of India vs The Management And Others** argued that the discretion vested in the Tribunal u/s 11-A should be judiciously exercised. The crux of his argument is that the punishment imposed on the claimant is appropriate to the charge and the Tribunal should not interfere.

The learned AR for the claimant on the other hand argued on the legislative intention behind incorporation of sec 11A of the Act by placing reliance in the case of **ML Singla vs Punjab National Bank, AIR 2018 SC 4668,** and submitted that in the said judgment, the Hon'ble SC have held that even if the issue

relating to the fairness of the inquiry is decided in favour of the employer, even then the Tribunal has to consider if the punishment commensurate the charge.

It is felt proper to observe herethat in the case of **Firestone** referred supra, the Hon'ble SC have held that after incorporation of the provision of sec 11A in the ID Act, the Tribunal, in order to record a finding on the fairness of the domestic inquiry or the proportionality of the punishment, can not be confined to the materials which were available at the domestic inquiry. On the otherhand 'material on record' in the proviso to sec 11A of the ID Act must be held to refer the materials before the Tribunal. Which are(1) the evidence taken in by the parties during the domestic inquiry (2) the evidence taken before the Tribunal. But in this case no evidence has been adduced by the claimant before this Tribunal to presume that the punishment imposed is disproportionate to the charge. The evidence was adduced to prove the irregularities in conduct of the domestic inquiry, which was not found worthy of acceptance. On the other hand the witness examined by the management has proved the past misconduct of the workman and the punishment imposed which has attained finality and admitted by the workman. Thus on considering the evidence adduced before this Tribunal, the one and only conclusion is that the punishment imposed on the claimant for disobedience of the direction which amounts to mis conduct, is proportionate to the charge and same has been imposed for loss of confidence on the employee by the employer. Hence it is not felt proper to interfere and modify the punishment imposed by the disciplinary authority, in exercise of the power conferred u/s 11A of the ID Act. Hence ordered.

ORDER

The claim advanced by the claimant be and the same is answered against him. The finding of the disciplinary Authority in imposing the punishment is held proportionate to the finding of misconduct. The claimant is held not entitled to any relief.

Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 8 मई, 2023

का.आ. 757.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार हस्तशिल्प और हथकरघा निर्यात कार्पोरेशन,भारत, सरकार की एक इकाई भारत, ओ/ओ जवाहर व्यापार भवन, अनुलग्नक-1, टॉलस्टॉय मार्ग, नई दिल्ली ; मैसर्स क्लॉथ चैनल, 393, सेक्टर-29, नोएडा, जिला- गौतम बुद्ध नगर, (यू.पी), के प्रबंधतंत्र के संबद्ध नियोजकों और श्री रहमत खान और 17 अन्य, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-2 नई दिल्ली के पंचाट (संदर्भ सं. 21/2017) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 06.05.2023 को प्राप्त हुआ था।

[सं. एल-42012/12/2017 -आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 8th May, 2023

S.O. 757.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 21/2017) of the Central Government Industrial Tribunal cum Labour Court - II New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The Handicrafts and Handlooms Exports Corp. India, A unit of Govt. India, O/o Jawahar Vyapar Bhawan, Annex-1, Tolstoy Marg, New Delhi ; M/s Clothes Channel, 393, Sector-29, Noida, Distt. Gautam Budh Nagar,(U.P), and Shri Rahmat Khan & 17 Ors, Worker, which was received along with soft copy of the award by the Central Government on 06.05.2023.

[No. L-42012/12/2017 - IR(DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI.

Present: Smt. PRANITA MOHANTY, Presiding Officer, C.G.I.T.-Cum-LabourCourt-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 21/2017

Date of Passing Award- 18.04.2023

Between:

Sh. Rahmat Khan S/o Mohd. Shaffi,
& 17 Ors, R/o H.No. A-1296,
Durga Gali, Mandwali, Delhi-110092 ….Workman

Versus

1. The Handicrafts and Handlooms Exports Corp. India, A unit of Govt. India,
   O/o Jawahar Vyapar Bhawan, Annex-1,
   Tolstoy Marg, New Delhi-110001

2. M/s Clothes Channel, 393, Sector-29,
   Noida, Distt. Gautam Budh Nagar,
   Gautam Buddh Nagar (UP) …..Managements

Appearances:-

Shri Ajit Singh Ld. A/R for the claimant.
None for the Management.

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. he management of (i) The Handicrafts and Handlooms Exports Corp. India, A unit of Govt. India, (ii) M/s Clothes Channel, 393, Sector-29,Noida, and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-42012/12/2017-(IR(DU)) dated 05/06/2017 to this tribunal for adjudication to the following effect.

> **"Whether the workmen i.e. Sh. Rahmat Khan S/o Mohd. Shaffi and 17 others whose details are enclosed herewith in annexure HHEC are entitled for re-instatement against the management of the Handicrafts and Handlooms Export Corporation of India as Tailor with all consequential benefits? If not, then, what relief the workmen are entitled to?"**

As stated in the claim petition, the claimants who are 18 in No were working in the establishment of Management no 1 as it's permanent employee since the date mentioned in the claim petition as tailors. Though they were working for management No 1 with all sincerity and honesty, the later was not extending the legal and legitimate service benefits to them. The management No 1 was not paying them the minimum wage as notified from time to time by the Govt. the claimants were often raising the issue and demanding the legal benefits from the said employer. Being aggrieved, the management No 1 made a statement that the claimants are not the employees of HHE C but the employees of the contractor M/S Cloth Channel. But there never existed employer employee relationship between the said contractor and the workmen. Any contract , if any, between the Management No 1 and Mgt No 2 is sham and intended to camouflage the legal rights of the claimants. The claimants had earlier raised a dispute before the appropriate authority claiming minimum wage and an order was passed by the said authority in favour of the claimants.

Suddenly, the management no 1 stopped giving work to the claimants w. e. f.01.09.1991 and thereby terminated their service without notice and without following the procedure laid down under the ID Act. On 04.03.1991, the claimants served a demand notice on management no 1. But the same was not replied. A dispute was raised before the Labour commissioner Ghaziabad and the effort for conciliation failed. Hence an Industrial Dispute was raised by these workmen before the Labour Court Ghaziabad and the learned Labour Court had passed an award in favour of the claimants on 16.08.2010 directing reinstatement with full back wages.

The Respondent No 1 challenged the said order before the Hon'ble High Court of Allahabad. There, the management never came up with clean hand. However it agreed to pay the minimum wage as notified by the Govt. thereafter the Management continued to pay a consolidated sum of Rs 1500/- per month to each of the claimants as their wage until the dispute was finally decided by the Hon'ble H C of Allahabad by order dt 22.08.2016.theHon'ble H C of Allahabad in their final order came to hold that the Labour Court Ghaziabad lacks jurisdiction to decide the dispute and thereby set aside the impugned Award. Hence the reference was again made to this Tribunal for adjudication. The claimants have further stated that the Hon'ble HC while taking note of the fact that the claimants are unemployed since 26 years directed for expeditious disposal of the reference.

The other stand as per the claim statement is that the claimants were the employees of Management NO 1 and working under it's direct control and supervision it was paying remuneration to them and each claimant had worked for the Management no 1 for more than 10 years before their services were terminated .hence an award be passed in their favour directing the management to reinstate them in service with full back wages.

The Management No 1 appeared in response to the notice and filed WS denying all the stand taken by the claimants. Amongst others it has been pleaded that the present proceeding is hit under the principle of Resjudicata as the Hon'ble HC of Allahabad have already decided the employer and employee relationship between the parties and the said judgment has attained finality not being challenged in any other higher forum. Besides that it has been pleaded that the claimants were employed by the contractor Respondent No 2 , who was awarded a contract for some work and for execution of the said work, the claimant workmen might have been engaged. The said contractor, Respondent No 2 is a registered firm and besides paying remuneration to the claimants, it was also making contribution to EPF and ESI in respect of these workmen and making necessary deduction from their wage. The workmen of this proceeding had never worked for more than 240 days in a calendar year under the employment of the Respondent No 1. Hence their prayer for grant of temporary status and reinstatement in to service is untenable under law. The claim is liable to be dismissed being barred by limitation too.

In the rejoinder filed the claimants have denied the stand of the Respondent no 1 with regard to limitation and Resjudicata. It has been stated that the claim was raised before the Labour Court Ghaziabad and an award was passed in favour of these workmen. But the Respondent challenged the jurisdiction of the Labour Court Ghaziabad and the Hon'ble HC of Allahabad disposed of the WPC giving liberty of raising the dispute in the appropriate forum. Hence the proceeding is not barred by limitation. It has also been stated that the Hon'ble HC of Allahabad have not expressed any view on the merit of the matter nor have decided any issue of controversy. Hence the principle of Resjudicata does not apply to this proceeding.

On these rival pleadings the issues were framed as under by order dt 19/02/2018.

ISSUES

1- Whether the claim is not legally tenable in view of the various preliminary objections.

2- In terms of reference.

The workmen adduced evidence by examining 17 witnesses who are the claimants of this proceeding. Except witness No 1 the Respondent No 1 did not cross examine the other witnesses and did not appear during the dates of the proceeding, hence the cross examination of the witnesses were marked as nil by Respondent No 1 and the claimants closed their evidence. The respondent No 2i.e the Cloth channel did not appear in this proceeding and by order dt 18/01/2019, the said Respondent was proceeded ex parte.

Findings

Issue no 1

The contesting respondent while filing WS has challenged the maintainability of the proceeding mainly on two grounds i.e the proceeding is barred by limitation and the same is hit under the principle of Resjudicata as the Hon'ble HC of Allahabad have already decided the relationship of the parties ab\nd their claim. As stated above no evidence has been adduced in this proceeding by the Respondent No 1. The judgment of the Hon'ble HC of Allahabad dt 22/08/2016, passed in Writ case No 28105/2011 has been placed on record by the parties. On a careful reading of the said judgment, it appears that the order of the Labour Court Ghaziabad was set aside on the ground of want of jurisdiction only andliberty was granted to the claimants for raising the dispute before the appropriate forum. The Hon'ble Court have not decided the issues involved in the proceeding. Hence it can not be held that the present proceeding is barred under the principle of Resjudicata.

So far as the objection relating to limitation is concerned, it is found from record that from the date of their termination, the claimants are fighting the litigation before the Labour court Ghaziabad and before the

Hon'ble HC of Allahabad. The Hon'ble court set aside the award passed by the Labour Court and liberty being granted the present dispute has been referred by the appropriate Govt. to this Tribunal. The Hon'ble HC have clearly observed that 26 years have passed in the meantime and the claimants are pursuing their cause which needs early disposal. For the said observation of the Hon'ble Court and for the on going litigations, it is held that the proceeding is not barred by limitation and the objection raised by the Respondent is rejected. This issue is accordingly decided in favour of the claimants.

Issue No 2

The claimant no1 i.e. Rehamat Khan testified as WW1 and produced a No of documents marked in the series of WW1/1 to WW1/8. Another claimant Bindan Singh also testified as WW2. He , besidesrelying upon the documents filed by WW1 proved his bank pass book to prove that he was getting remuneration from the Respondent 1. These two witnesses were cross examined by the Respondent No 1. All other claimants examined as witnesses were not cross examined and their evidence stands un rebutted and un challenged. The witnesses examined have stated in clear terms that they were employed by the management No 1 and getting remuneration directly from the said management. However, the management was not paying them appropriate wage and not extending the statutory benefits. Though the respondent has taken a stand that the claimants were engaged by Respondent No2 , who was awarded a contract for execution of specific work and the contractor being their employer was paying them wage and making statutory deductions, no evidence to prove the said stand has been adduced by the management. Neither the copy of the agreement nor the documents relating to payment made by the Respondent No 1 to Respondent No 2 towards the wage of these claimants has been placed on record. On the contrary the documents filed by the claimants which include their Bank pass book and attendance register clearly prove that the claimants from the first date of their engagement and till the date of their termination were working under the establishment of Respondent No 1 under the supervision and control of it's officers and had discharged the duty continuously for more that 240 days in a calendar year. But Respondent Management No 1 terminated their services illegally w. e. f. 01.09.1991. at the time of such termination as admitted by the Respondent no notice of termination, notice pay or termination compensation was paid as provided u/s 25 F of the ID Act. It is a fact noticeable that the claimants are litigating for the injustice meted to them in one forum or other and more than 30 years have passed in the mean time. The claimants who had appeared before this Tribunal were all found to be old and already attained the age of superannuation. The termination of their service is held at the instance of Respondent No 1 as no contrary evidence than adduced by the claimants is available on record. Hence it is concluded that no order of reinstatement with back wages c can be passed in the circumstances. The claimants are held entitled to a certain amount of compensation which would serve the ends of justice. This issue is accordingly decided in favour of the claimants.

Hence ordered.

ORDER

The reference be and the same is answered in favour of the claimants. It is held that the claimants were engaged for work by the Respondent No 1 on different dates as mentioned in the list annexed to this order. But their services were illegally terminated by Respondent No 1 w. e. f. 01.09.1991. more than 31 years have passed in the meantime. In view of the circumstances, it is felt proper to allow them to get an amount of compensation instead of a direction for re instatement with back wages. Accordingly the respondent No 1 i.e Handicrafts & Handloom Export Corporation of India shall pay a lump sum amount of Rs 5,00,000/-(five lakh) to each of the claimants within 60 days from the publication of the Award failing which the amount as directed shall carry interest @6% per annum from the date of this award and till the final payment is made.

Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 8 मई, 2023

का.आ. 758.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कार्य महानिदेशक, केंद्रीय लोक निर्माण विभाग,निर्माण भवन, नई दिल्ली; कार्यकारी अभियंता, केंद्रीय लोक निर्माण विभाग, विद्युत प्रभाग संख्या VIII, निर्माण भवन, नई दिल्ली; कार्यकारी अभियंता, केंद्रीय लोक निर्माण विभाग विद्युत निर्माण, प्रभाग-I, नई दिल्ली, के प्रबंधतंत्र के संबद्ध नियोजकों और महासचिव, केंद्रीय लोक निर्माण विभाग कर्मचारी संघ, करोल बाग, नई दिल्ली,, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण-

सह- श्रम न्यायालय-2 नई दिल्ली के पंचाट (संदर्भ संख्या 03/2004) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 06.05.2023 को प्राप्त हुआ था।

[सं. एल- 42012/77/2003-आई आर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 8th May, 2023

S.O. 758.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 03/2004) of the Central Government Industrial Tribunal cum Labour Court - II New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The Director General of Works, Central Public Works Department, Nirman Bhavan, New Delhi ;The Executive Engineer, Central Public Works Department, Electric Division No. VIII, Nirman Bhavan, New Delhi; The Executive Engineer, Central Public Works Department, Electric Construction, Division-I, New Delhi, and The General Secretay, C.P.W.D Workers Organization, Karol Bagh, New Delhi, which was received along with soft copy of the award by the Central Government on 06.05.2023.

[No. L- 42012/77/2003-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI.

Present: Smt. PRANITA MOHANTY, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 03/2004

Date of Passing Award- 20.04.2023

Between:

The General Secretay,
C.P.W.D Workers Organization,
3A/38, W.E.A., Karol Bagh, New Delhi
New Delhi-110005 ….Workman

Versus

1. The Director General of Works,
   Central Public Works Department,
   Nirman Bhavan, New Delhi
2. The Executive Engineer,
   Central Public Works Department,
   Electric Division No. VIII, Nirman Bhawan,
   New Delhi-110001
3. The Executive Engineer,
   Central Public Works Department
   Electric Construction, Division-I,
   New Delhi-110001 ….Managements

Appearances:-

Shri B.K Prasad, Ld. A/R for the Claimant.
Shri Atul Bhardwaj, Ld. A/R for the Management.

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of (i) The Director General of Works, Central Public Works Department,(ii) The Executive Engineer, Central Public Works Department Electric Division No. VIII, (iii) The Executive Engineer, Central Public Works Department Electric Construction, Division-I, and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-42012/77/2003-(IR(CM-II)) dated 23/12/2003 to this tribunal for adjudication to the following effect.

"Whether the demand of the CPWD Workers' Organisation for regularization/Absorption of the services of workmen, namely S/Shri Rajiv Kumar and Ashok Kumar Singh and S/Shri Ram Raj Singh, Raj Kumar and Bhupinder Singh (working as contract labourers, against the job of Fire Alarm Operator) in the establishment of Central Public Works Department at Fire Control Rooms, Nirman Bhawan and Shastri Bhawan Division, New Delhi respectively is legal and justified? If yes, to what relief these workmen are entitled?"

As stated in the claim statement the claimants who are 5 in number have been continuously working for the mgt CPWD as Fire Alarm Operator since the year 1996-1998-1999 and 2000 respectively. The details of the workmen including their date of joining place of work and the salary drawn has been described in detailed in the claim statement. It has further been pleaded that they are discharging the duty which is perennial in nature but the CPWD was paying them less than the minimum wage which is even 1/3 of the wage paid to it's regular workers of similar category. They were not getting the facilities available to the regular employees who are discharging similar nature of work including leave, bonus, uniform and medical facilities etc. The workmen were often raising objection for the same. The mgt CPWD had entered into contract with the different contractors and the claimants were shown engaged through the said contractors. But the contract so entered is sham and intended to camouflage the rights of the claimants. The work performed by the workmen is of perennial in nature and the same is incidental to the mandatory activities of CPWD. When the claimants for the ill motive of CPWD were shown engaged through the contractor, the said contractor had no license as envisaged in section 12 of the CLRA Act, 1970. Not only that, the CPWD has no registration to engage contract labour as provided u/s 7 of the said Act. Since, the claimants were working under the supervision and control of CPWD in it's premises and the nature of work including the mandatory duties of CPWD, there exists a master and servant relation between the claimants and the mgt CPWD. When the claimants were recruited, their qualifications were verified by CPWD. The allotment of duty, supervision and control of the same are within the power and control of the officers of CPWD, who use to make regular check of their attendance and performance. On the pretext of the sham and bogus contract, CPWD was denying the legitimate rights to the claimants. Being aggrieved the claimants had approached the Hon'ble High Court of Delhi by filing a writ petition seeking their regularization and abolition of contract labour system. The Hon'ble High Court of Delhi in view of the judgment of the Constitution Bench of Hon'ble Supreme Court passed in the case of Steel Authority of India, disposed of the writ petition and granted liberty to the claimants to initiate legal proceeding before the appropriate authority under the ID Act. The claimants, then raised a dispute before the Labour Commissioner and the appropriate govt. referred the matter to this tribunal to adjudicate on their claim for regularization/absorption of the services in the establishment of CPWD.

Being noticed the mgt CPWD appeared and filed written statement denying the stand by the claimant workmen. The relationship as employer and employee has been specifically denied. Tt has been stated that CPWD floats tenders for execution of different works through contractors following the codal procedure. The contract is awarded to the successful bidder who engages his own men for execution of the work entrusted. The said contractor, makes payment to the persons employed as agreed between the said persons and the contractor. In term the said contractor gets payments from the mgt CPWD as agreed in the contract. The said contract is in principal to principal basis and the CPWD never exercises supervision and control over the persons employed through the contractor. If the claimants were getting less wage or not getting legal benefits they should have raised the same against the contractor. However, at no point of time any objection was raised by these claimants before the CPWD relating to their less wage or denial of benefits. With this, the mgt CPWD has denied the relationship as the employer of the claimants and its liability in respect of the relief sought for.

The claimants filed rejoinder stating that there is a real employer and employee relationship between CPWD and the claimants. They have reiterated that the work being attended by the workmen within the establishment of CPWD and they being Lift Operators were handling the machinery of CPWD under the supervision and control of it's officers. The denial of the relationship by the mgt is vague and false. Thereby the claimants have prayed for an award in their favour.

On this rival pleadings the following issues were framed for adjudication.

Issues

1.Whether there exists relations of employer and employee between the workmen and the mgt. CPWD. If not, its effect.

2.As per the terms of reference.

The claimants Ram Raj, Rajiv Kumar, Raj Kumar and Bhupinder Singh testified as WW1 to WW4. They have relied upon several documents exhibited as WW1/1(colly) WW/1/2 (colly) and WW1/3(colly). During the pendency of the proceeding the claimant Ashok Kumar, S/o Mukut Dhari Singh, died and his wife

and son were substituted as legal heirs by order dated 25.11.2019. The mgt examined one witness, the Executive Engineer as MW/1, who produced several documents marked in the series of MW1/1 to MW1/3(colly). The witnesses were thoroughly cross examined by their adversaries.

When the matter stood thus, and adjourned for evidence to be adduced by the workmen, a petition was filed under the provisions of section 33 of the ID Act alleging contravention of the said provision, as the mgt, without prior permission terminated the services of the workmen namely Ram Raj Singh, Raj Kumar, and Bhupinder Singh w.e.f. 01.02.2018. After hearing the said petition this Tribunal by order dated 14.12.2018 directed the mgt CPWD to reinstate the workmen named above in service with immediate effect along with back wages from 01.02.2018 and till their reinstatement.

At the outset of the argument the Ld. A/R for the mgt CPWD challenged the maintainability of the claim on ground of non- joinder of the parties. He submitted that when the CPWD has specifically denied it's relationship with the claimants as employer, and the claimants have admitted in the pleadings that they were engaged through a contractor, may be under a sham contract, the presence of the said contractor in this proceeding is necessary for effective and complete adjudication of the matter. He also challenged the maintainability for want of espousal and cause of action. Relying upon the judgment of the Hon'ble Supreme Court in the case of **Workmen vs. Coates India Ltd (2004) 3 SCC 547** and the photocopies of the bank statement of the workmen marked as exbht. MW1/1 (colly) and vouchers of salary exhbt. MW1/2(colly), he submitted that when the claimants were not getting their wage directly from CPWD but from the contractors, there exists no employer and employee relationship. He also relied upon the judgment of the Hon'ble Supreme Court in the case of **Haldia Refinery Canteen Employees Union Vs. India Oil Corpn, Ltd (2005) 5SCC51** to argue that some kind of control will not establish the employer and employee relationship unless the establishment has the authority of making appointment, taking disciplinary action or removal from service. He also relied upon the case of **Balwant Rai Saluja Vs. Air India Ltd., (2014) 9 SCC 407** and the case of **BHEL vs. Mahindra Prasad Jakhmola and Ors.** decided by the Hon'ble Supreme Court in civil appeal no 1799-1800/2019 to submit that the claimants since admitted that no appointment letter PF no. wage slip etc. were issued to them by the mgt CPWD, they cannot be treated as the employees of the mgt CPWD and as such not entitled to the relief asked for.

On the other hand, the ld. AR for the claimants citing the judgment of the Hon'ble Supreme Court in the case of **Ram Singh and Others vs. Union Territory, Chandigarh & Ors on 7 November, 2003** submitted that the judgment of **Steal Authority of India** referred supra being delivered by a Bench of 5 judges of the Hon'ble Supreme Court, the judgment in the case of **BHEL vs. Mahindra Prasad Jakhmola** delivered by a Bench of two judges cannot override the earlier judgment. He focused his arguments on the fact that the mighty employer sometimes keeps the poor employees in dark by creating sham contracts and in such a situation it is the duty of the Industrial Adjudicator to lift the veil and to find out who is the real employer. While relying upon the judgment in the case of **Steel Authority of India vs. National Union Waterfront Worker Union reported in (2001) 7SCC page 1,** he submitted that as directed by the Hon'ble Apex Court the Tribunal should take up the effective control test to ascertain about the relationship of the workmen with the mgt or the contractor. He also relied upon the judgment of **Chintaman Rao vs. State of MP (1958(II)LLJ252) & Workman of Food Corporation of India vs. Food Corporation of India** reported in **(1985(ii)LLJ4)** to argue that the Hon'ble Apex Court has set out the guidelines to find out the relationship between the workmen and the principal employer where a contractor employes a workman.

Findings

Issue no.1 &2

It is a fairly settled position that the ID Act as well as the contract labour (Regulation & Abolition) Act 1970 are essentially social and beneficial legislations. The main purpose of CLRA Act 1970 is to regulate the working conditions of the workers under the contract labour system and to abolish the same by the appropriate Govt. as provided u/s 10of the said Act. Section 12 of the said Act bars a contractors from undertaking or executing any work through contract labour, except under and in accordance with the license issued. Section 23, 24 & 25 of the ID Act makes contravention of the provisions of the Act, punishable thereon. The Act requires the principal employer of the establishment to get itself registered under the CLRA Act, so as to avail the benefits of the provisions of the Act.

In this proceeding, no separate issue has been farmed on the maintainability though the mgt took specific stand challenging the maintainability. However, this aspect can be considered while deciding the other issues.

The claimants examined as witnesses have admitted that they had joined CPWD and posted in the Nirman Bhawan and Shastri Bhawan as described by them in respect of the individual workmen in the claim

statement. The said workmen as witnesses have further stated that they were working as Fire Alarm Operators under the Executive Engineer of CPWD. The date of joining of individual workman and their place of posting including their current salary varies from person to person as stated by them. During cross examination they have admitted that no letter of appointment was issued to them nor any other document is available with them to prove the employee and employer relationship with CPWD except the documents filed as Exbht. as WW1/1 to WW1/262. All the claimants have relied upon the same set of documents. The documents include the attendance register, the log book of duty in respect of the individual workers. On the basis of these documents the claimants have asserted to prove that they were working under the supervision and control of the mgt CPWD.

On behalf of the mgt one Debasis Chaudhary Executive Engineer testified as MW1. While giving evidence he produced the contract entered between CPWD and the contractor for operation and routine maintenance of Automatic Fire Alarm System. The name of the contractor, as per the document marked as MW1/3, is Ahluwalia Fire Protection Engineers. On the basis of this document the Ld. A/R for the mgt submitted that the CPWD as a matter of standard practice engages contractors for execution of certain work. The said contractor might have engaged his own manpower to execute the work, with whom CPWD has no relations. In addition to this, the witness for the mgt produced a number of vouchers raised by the said contractors for payment towards the work executed. Thus the Ld. A/R for the mgt argued that the claim of the claimants about their direct employment, on the fact of the documents filed by the mgt, stands disproved and in absence of proof of employment by CPWD the claim is untenable.

The workmen have filed affidavit stating that they were engaged directly by the mgt for discharge of the duty as Fire Alarm Operators, which work is perennial in nature and a part of the primary duty of CPWD maintaining different Govt. buildings. The workmen have specifically denied the stand of the mgt that they were appointed by the contractor at any point of times. It is worth mentioning that the claimants are claiming their employment starting from the year 1996 to 2000. No other document except MW1/1 to mw1/3 has been filed by the mgt to prove that the year in which the claimants are alleging their employment under the mgt CPWD there was a contractor, since the documents Mw1/3 only proves about the existence of a contract between CPWD and one Ahuluwalia in the year 2014. Hence, it is difficult to believe that the claimants, from the beginning of their employment were appointed through a contractor.

It is pertinent to observe that the claimants in their affidavit have clearly stated that they were working and discharging duty under the supervision and control of the officers of CPWD who were not only marking their attendance and also making arrangement of their duty roaster and shifts. The claimants have also stated that they were receiving their remuneration from CPWD. Though the mgt in order to deprive them of their lawful rights introduced a contractor in the meantime, the agreements entered between the contractor and CPWD has not been placed on record except the document MW1/3. This said agreement no where contains the references regarding the engagement of the claimants through the contractors from the first date of their engagement. The vouchers filed by the mgt are self created documents and intended to defeat the claim of the claimants.

There is no dispute about the proposition of law that onus to prove that the claimants are in the employment on the mgt is always on the workmen and it is for them to adduce evidence to prove the factum of their employment with the mgt. Such evidence may be in form of receipt of salary or with regard to 240 days of work or document of employment etc. The tribunal during adjudication has to consider the oral as well as the documentary evidence placed on record by both the parties so as to decide the question of relationship of employer and employee between the mgt and the claimants. But there are cases, where the claimants who stand in a disadvantageous position in comparison to the mighty employer are not in a position to produce documentary evidence. In such a case, the Tribunal or the Industrial Adjudicator has to act carefully to ascertain the truth.

In the case of **Steel Authority of India vs. National Union Waterfront Worker Union reported in (2001) 7SCC page1,** the Hon'ble Apex Court have prescribed for the effective control test to ascertain about the relationship of the workmen with the mgt or the contractor. Not only that in the case of **Chintaman Rao vs. State of MP (1958(II)LL252)** the Apex Court ruled that the concept of employment involves 3 ingredients (i) Employer (ii) Employee (iii) Contract of Employment. The employer is one who employees or engages the service of other person. The employee is one who works for another for hire. The employment is the contract of service between the employer and employee, where under the employee agrees to serve the employer subject to his control and supervision. In the case of **Workman of Food Corporation of India vs. Food Corporation of India reported in (1985(ii)LLJ4)** the Hon'ble Apex Court pronounced that the contract of employment always discloses a relationship of command and obedience between them. Where a contractor employes a workman to do the work which he contracted with a third person to accomplish, the workman of the contractor would not become more than the workman of the third person. In the case of **Ram Singh and Ors. vs. Union Territory of**

Chandigarh and Ors. (2004) 1SCC 126, the Hon'ble Apext Court have elaborately discussed the factors to be considered for determining the employer employee relationship and the factors include, control, integration of power of appointment, liability to pay, liability to organize work etc. Thus from the above analysis of the principle of law, it emerges that the effective control is a test to determine the employee and employer relationship between the parties.

With regard to the case in hand, except for the bald statement of MW1 that the claimants are/were the workers of the contractors, the mgt has not filed any evidence to resist the stand taken by the claimants that from the beginning they are working for CPWD being engaged directly. The payment vouchers marked as MW/1/2 and the document of contract marked as MW1/3 are of no help since those are the documents relating to a period much later than the period of employment as claimed by the claimants. The testimony of the workmen that they are still working under the mgt from the respective dates of their initial appointment, though the contractor has been introduced subsequently has gone on unassailed. It seems that the mgt has executed a contract for operation of the Automatic Fire alarm in the year 2015, just to deny the claim of the claimants. All these circumstance lead this Tribunal to draw an inference against the mgt that the contract entered by the mgt with the contractor in the year 2015 is intended to eliminate the claim of the claimants who started working since the year 1996-1998-1999 and 2000 respectively. The attendance register and the log books filed by the claimants prove that they are working continuously in the establishment of CPWD under the supervision an control of its official though after introduction of the contractor they are getting their remuneration through the contractor. It is necessary to observe that the mgt is not registered u/s 7 of CLRA Act and the contractor has no license u/s 12 of the said Act.

The reference has been received to adjudicate with regard to the justification in not regularizing the service of these workmen by the mgt CPWD. In the preceding paragraphs it has already been held that the claimants have successfully proved that they are the employees of the mgt CPWD. Now, it is to be seen if their claim for regularization is proper and justified. The claimants examined as WW1 to WW4 have stated under oath that they are working continuously since more than 20 years on a meager salary. The mgt is having vacancies and the nature or work discharged by the claimants are perennial. Hence, they should be regularized in the service of CPWD. The mgt witness examined as MW1 has admitted during cross examination that the different categories of employees of CPWD get different categories of wage. But the witness has not stated, if the claimants are getting appropriate remuneration according to the work done by them. As discussed in the preceding paragraph, the mgt, though filed the contract executed between it and the contractor, failed to connect these workmen with the said contractor in any manner. When asked about the wages paid to the workmen the witness expressed his ignorance about the same. He was also called upon to say as to who by whome and when the vouchers produced as MW1/2 were prepared. The witnesses express his ignorance about the same.

But the Ld. Counsel for the mgt strenuously argued that the claimants are none but the persons engaged by the contractors for execution of the work assigned to the contractor and the claimants having not been recruited through due process their candidature cannot be considered for regularizing their services.

To support his stand he placed reliance in the case of **Secretary State of Karnatak and others vs. Uma Devi and others reported in (2006)4 SCC Page 1.** On behalf of the claimants objection was raised regarding the applicability of the judgment of Uma Devi referred Supra to Industrial Dispute relating to unfair labour practice.

In the case of Uma Devi the Hon'ble Supreme Court have held that the persons who were appointed on temporary and casual basis without following proper procedure cannot claim absorption or regularization since the same is opposed to the policy of public employment. But this is not a case of claiming automatic regularization or absorption. The claimants of this proceeding have ventilated their grievance since they were deprived of their status and entitlements despite long and continuous service describing the same as unfair labour practice.

The effect of the constitution Bench judgment of the Apex Court in the case of **Uma Devi** came up for consideration with reference to unfair labour practice by the Hon'ble Supreme Court in the case of **Mahrashtra State Road Transport and Another vs. Casteribe Rajya Parivahan Karamchari Sangathan reported in (2009)8 SCC Page 556** wherein, the Hon'ble Apex Court came to hold that the judgment in the case of Uma Devi has not over ridden the powers of Industrial and Labour Courts for passing appropriate order, once unfair labour practice on the part of the employer is established. The judgment of Uma Devi does not denude the Industrial and Labour Court of their statutory power.

Now it is to be seen if the claimants of this proceeding were subjected to unfair labour practice or not. **"Unfair Labour Practice"** as defined u/s 2(ra) means any of the practice specified in the 5th Schedule of the ID Act. Under the said 5th Schedule, to employ workmen as Badlis, Casual or temporaries and to continue them as such for years with the object of depriving them of the status and privilege of permanent workmen amounts to

unfair Labour Practice. In this case the document filed by the workman and marked as exhibited as evidence are the of log books maintained during the undisputed part of time, clearly indicates that these claimants are working since the year 1996,1997, 1999 and 2000 respectively. The management, in utter disregard of law, refused regularizing their service against the vacant post and the same amounts to unfair labour practice.

Besides the case of Maharashtra Road Transport referred supra, the Hon'ble Supreme Court in the case of **Shri Ajay Pal Singh vs. Haryana Warehousing Corporation decided in Civil Appeal No. 6327 of 2014** disposed of on 09th July 2014 have held that:

"The provisions of Industrial Disputes Act and the powers of the Industrial and Labour Courts provided therein were not at all under consideration in Umadevi's case. The issue pertaining to unfair labour practice was neither the subject matter for decision nor was it decided in Umadevi's case."

Thus after going through the judgments of Maharashtra Road Transport and Ajay Pal Singh refereed supra it is held that the observation made in the case of Uma Devi has no applicability to the facts of the present case where the workmen have been subjected to Unfair Labour Practice being engaged for work on daily wage basis for a prolong period. Not only that the Hon'ble High Court of **Jammu and Kashmir in the case of J and K Bank Limited vs. Central Government Industrial Tribunal and Others reported in 2018 LAB I.C. 2970** have held:

"Unfair Labour Practice-what amounts to-workmen continued in temporary/contractual capacity for years together despite availability of vacant posts, aimed at depriving them of status and privileges of permanent workmen- clearly amounts to unfair labour practice- directions issued by Tribunal to appellant Bank to frame scheme for regularization of respondent workmen within period of 3 months and that respondents workmen would be deemed to have been regularized in case of failure of appellant- Bank to frame scheme, held, justified."

In this case the oral and documentary evidence since proves the continuous service of the workmen for the management on daily wage basis since the year 1996 and onwards, the decision of the management in not regularizing their service against the permanent vacancy is held to be illegal and unjustified.

The witness examined on behalf of the management as MW1 has stated that 5 persons who are the claimants of this proceeding are working for the management. Though under the scope of the reference this tribunal is to adjudicate about the legality and justifiability of the management in not regularizing the service of the workmen, the industrial adjudicator under the Industrial Dispute Act enjoys wide power for granting relief which would be proper under a given circumstance. In the case of **Hari Nandan Prasad and Another vs. Employer I/R to Management FCI reported in (2014)7 SCC 190** the Hon'ble Supreme Court have held that the power conferred upon Industrial Tribunal and Labour Court by the Industrial Dispute Act is wide. The Act deals with Industrial Dispute, provides for conciliation, adjudication, settlement and regulates the right of the parties and the enforcement of the awards and the settlement. Thus, the Act empowers the adjudicating authority to give relief which may not be permissible in common law or justified under the terms of the contract between the employer and the workman. While referring to the judgment of **Bharat Bank Limited vs. Employees of the Bharat Bank Limited reported in (1950) LLJ 921 Supreme Court** the court came to hold that in setting the dispute between the employer and the workmen the function of the Tribunal is not confined to administration of justice in accordance with law. It can confer rights and privileges on either party which it consider reasonable and proper, though those may not be within the terms of any existing agreement. It can create new rights and obligations between them which it considers essential for keeping Industrial peace.

Here is a case, where, as indicated above the workmen have been victimized on account of unfair labour practice by the management. Keeping the situation in view, it is felt proper to issue a direction to the management to regularize the service of the claimants/workmen within a period of three months as permanent Fire Alarm Operators which would meet the ends of justice. This direction is specific in respect to the workmen of this claim petition as per the list annexed to the award and passed in exercise of the power conferred on the Tribunal to grant any other relief as per the reference received from the Appropriate Government. It is further observed that during the pendency of this proceeding the mgt had terminated the service of three of the workmen namely Ram Raj Singh, Raj Kumar and Bhupinder Singh. This Tribunal by order dated 14.12.2018 had allowed the application filed u/s 33 of the ID Act, by the said claimants and directed that they be reinstated in service with immediate effect and paid the back wages from 1st Feb 2018 till their reinstated to service. The Constitution Bench of the Hon'ble Supreme Court in the case of Jaipur Zila Sahakari Bhoomi VIkas Bank Ltd. is Shri Ram Gopal Sharma and others, (Civil Appall No. 87-88 of 1986) have held that when the service condition of an employee is changed during the pendency of an Industrial dispute in violation of the provisions of section 33 of the ID Act, the said action shall stand as nonest or as if the order was never passed by the employer. Keeping the said observation in mind, it is further directed, that that claimants, whose services were

terminated during the pendency of this proceeding and in respect of whom the order of reinstatement was passed on 14.12.2018 shall be granted continuity of service.

ORDER

The reference be and the same is answered in favour of the workmen. It is held that the action of the management depriving the workmen of their right for regularization their services is illegal and unjustified and amounts to unfair labour practice. The Management department i.e. CPWD is hereby directed to regularize the service of the workmen (as per the list annexed) from the date of their initiated engagement within 2 months from the date of publication of this award and grant them all service benefits within a further period of 2 months failing which the financial benefits including appropriate pay scale payable by the mgt to the claimants shall carry interest @of 4% from the date of accrual and till the final payment is made.

During the pendency of this proceeding one of the claimants named Ashok Kumar S/o Mukut Dhari Singh died and by order dated 25.11.2019 his wife Smt. Mausmi Singh and son Master Ranjeet Singh were substituted as legal heirs. For the death of the claimant Ashok Kumar Singh no direction and be given for regularization of his service within two months from the date of publication of the award. Hence it is directed that mgt shall regularize his service from the date of initial appointment, fix his pay and grant him all other benefits as would be granted to the other claimants of this proceeding. In addition to that, the mgt shall pay an additional amount of 2 Lakh to the legal heirs of the claimant Ashok Kumar in lieu of the benefits he would have availed had he been alive on the date of publication of the award. All the financial benefits to the legal heirs of the deceased claimant shall be paid within the time and in terms of direction given in the preceding paragraph. The list of the claimants is attached herewith as annexure A:-

List of the workmen

Sr. No	Name of the workers	Father's Name of the workers	Designation
1	Rajeev Kumar	Late Sh. Matadin	Fire Alarm Operator
2	Ashok Kumar (substituted by LR wife Mausmi Singh	Sh. Mukutdhari Singh	Fire Alarm Operator
3	Ram Raj Singh	Sh. Gorelal	Fire Alarm Operator
4	Raj Kumar	Sh. Mohar Singh	Fire Alarm Operator
5	Bhupender Singh	Sh. Jangjit Singh	Fire Alarm Operator

Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 8 मई, 2023

का.आ. 759.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार निदेशक, राष्ट्रीय इलेक्ट्रॉनिक्स और सूचना प्रौद्योगिकी संस्थान, इंद्रलोक दिल्ली; सचिव, सूचना प्रौद्योगिकी विभाग, एनसीटी दिल्ली सरकार, दिल्ली सचिवालय, आई.पी. एस्टेट दिल्ली; सेवा विभाग, एनसीटी दिल्ली सरकार, दिल्ली सचिवालय परिसर, आई.पी एस्टेट दिल्ली; प्रशिक्षण और तकनीकी शिक्षा विभाग, पीतमपुरा , दिल्ली, के प्रबंधतंत्र के संबद्ध नियोजकों और सुश्री प्रियंका और 11 अन्य, दिल्ली प्रशासन विकास विभाग औद्योगिक कर्मचारी संघ (पंजीकृत), तीस हजारी, दिल्ली, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह-श्रम न्यायालय-2 नई दिल्ली के पंचाट (संदर्भ सं. 56/2022) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 06.05.2023 को प्राप्त हुआ था ।

[सं. एल-42011/160/2021 -आई आर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 8th May, 2023

S.O. 759.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 56/2022) of the Central Government Industrial Tribunal cum Labour Court - II New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The Director,National Institute of Electronics & Information Technology, Inderlok Delhi ;The Secretary, Department of Information Technology, Government of NCT of Delhi, Delhi Secretariat, I.P , Estate Delhi ;Serivce Department, Government of NCT of Delhi, Delhi Secretariat Complex, I.P Estate Delhi ;Department of Training & Technical Education, Pitampura, Delhi, and Ms. Priyanka & 11 others, Through-Delhi Prashasan Vikas Vibhag Industrial Employees Union (Regd.) ,Tis Hazari, Delhi, which was received along with soft copy of the award by the Central Government on 06.05.2023.

[No. L- 42011/160/2021 -IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT-II, NEW DELHI

Present: Smt. PRANITA MOHANTY

ID. NO. 56/2022

Ms. Priyanka & 11 others.
Rept. By Delhi Prashanaik Vikas Vibhag Industrial
Employees Union (Regd.) Agarwal Bhawan, G.T Road,
Tis Hazari, Delhi-110054. ….claimants

Versus

1. The Director
   National Institute of Electronics & Information Technology,
   2nd Floor, Parsvnath Metro Mall, Inderlok Delhi-110052.
2. The Secretary,
   Department of Information Technology, Govt., of NCT of Delhi,
   9th Level, B-Wing, Delhi Secretariat, I.P , Estate Delhi-110002.
3. Serivce Department, govt., of NCT of Delhi,
   Delhi Secretariat Complex, 7th Level, B-Wing, I.P Estate Delhi-110002.
4. Department of Training & Technical Education,
   Muni Maya Marg, Pitampura, Delhi-110054. ….Managements.

AWARD

In the present case, a reference was received from the appropriate Government vide letter No. L-42011/160/2021 IR (DU) dated 7.12.2022 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Act, for adjudication of a dispute, terms of which are as under:

"**1. Whether the claim of Delhi Prashasanik Vikas Vibhag Industrial Employees Union in respect of Ms. Priyanka &11 Others vide letter dated 02.08.2021 that the contract / arrangement between the management of Department of Training and Technical Education , Govt.of NCT of Delhi(DTTE), services Department, Government of NCT of Delhi, Information of Technology Department, Government of NCT of Delhi (DIT) and National Institute of Electronics & Information Technology (NIELIT) is sham and bogus, is proper, legal and justified? If yes, to what reliefs the disputant workers are entitled and what other directions, if any, are necessary in the matter?**

2. Whether the claim of Delhi Prashasanik Vikas Vibhag Industrial Employees Union in respect of Ms. Priyanka &11 others vide letter dated 02.08.2021 to the management of Department of Training and Technical Education, Govt. of NCT of Delhi (DTTE) services Department, Government of NCT of Delhi, Information of Technology Department,

Government of NCT of Delhi (DIT) and National Institute of Electronics & Information Technology (NIELIT) for payment of arrears of difference in salary and salary as per pay scale of Data Entry Operators/ LDC on the principle of "Equal pay for Equal Work"is proper legal and justified? If yes, to what reliefs the disputant workers are entitled and what other directions, if any, are necessary in the matter?"

2. In the reference order, the appropriate Government commanded the parties raising the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Despite directions so given, Claimants union opted not to file the claim statement with the Tribunal.

3. On receipt of the above reference, notice was sent to the workmen as well as the managements. Neither the postal article send to the claimants, referred above, was received back nor was it observed by the Tribunal that postal services remained unserved in the period, referred above. Therefore, every presumption lies in favour of the fact that the above notice was served upon the claimants. Despite service of the notice, claimants opted to abstain away from the proceedings. No claim statement was filed on their behalf. Thus, it is clear that the workmen are not interested in adjudication of the reference on merits.

4. Since the workmen has neither put their appearance nor they led any evidence so as to prove their cause against the management, this Tribunal is left with no choice, except to pass a 'No Dispute/Claim' award. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 8 मई, 2023

का.आ. 760.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महाप्रबंधक, भारत इम्यूनोलॉजिकल कॉर्पोरेशन लिमिटेड, ओपीवी प्लांट, चौला, बुलंदशहर (यू.पी), के प्रबंधतंत्र के संबद्ध नियोजकों और श्री प्रमोद कुमार सोलंकी, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-2 नई दिल्लीके पंचाट (संदर्भ सं. 92/2012) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 06.05.2023 को प्राप्त हुआ था।

[सं. एल- 42012/103/2011 -आई आर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 8th May, 2023

S.O. 760.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 92/2012) of the Central Government Industrial Tribunal cum Labour Court - II New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, Bharat Immunological Corporation Ltd., OPV Plant, Chaula, Bulandshahr (U.P), and Shri Pramod Kumar Solanki, Worker, which was received along with soft copy of the award by the Central Government on 06.05.2023.

[No. L- 42012/103/2011 -IR (DU) - IR(DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI.

Present: Smt. PRANITA MOHANTY, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 92/2012

Date of Passing Award- 1st May, 2023

Between:

Shri Pramod Kumar Solanki,
S/o Sh. Balbhadra Singh,
Vill & PO Chola, Distt.,
Bulandshahr (U.P.) ….Workman

Versus

General Manager,
Bharat Immunological Corporation Ltd.,
Vill Chaula,
Bulandshahr (U.P). ….Management.

Appearances:-

Shri Satish Kumar Sharma , Ld .A/R for the claimant.
None for the Management

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Bharat Immunological Corporation Ltd., and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-42012/103/2011 (IR(DU)) dated 22.02.2012 to this tribunal for adjudication to the following effect.

> "**Whether the action of management of Bharat Immunological Corporation Ltd. in terminating the services of workman Shri Pramod Kumar Solanki, S/o Sh. Balbhadra Singh, without complying with section 25 F & 25 N of the ID Act., 1947 is legal and justified? What relief the workman is entitled to?"**

As per the claim statement the claimant Pramod Kumar Solanki was initially appointed on 21.05.2003 as a casual labour in the establishment of the mgt for doing the work of grass cutting and general cleaning in the premises of the mgt. He was discharging a perennial nature of work. At the time of initial appointment the mgt had obtained the signature of the workman on some plain papers and on some vouchers on the pretext that EPF and ESI subscriptions shall be made for him. But in fact except the ESI subscription no other benefit was granted to him by the mgt. The claimant during the course of employment had completed 240 days of continuous service in a calendar year for 3 consecutive years. Hence, the mgt had paid bonus to him. During this process the claimant had worked continuously from 21.05.2003 to 06.01.2011 as a causal labour. But as per the notification dated 15.06.1985 issued by the Govt. of Uttar Pradesh the service of the claimant should have been made regular with the mgt since his land was acquired by the mgt. But the mgt did not regularize his service and workman was insisting for the same. This created annoyance in the mind of the mgt and on 07.01.2011 his service was illegally terminated by the mgt. On that day, when he reached the factory premises the security guard did not allow him entry and showed a letter dated 05.01.2011 issued by the Deputy CGM(U) in which it was clearly mentioned that the claimant workman should not be allowed entry into the premises of the mgt to perform his duty. The said action amounts to termination of the service of the claimant who was working continuously from May 2003 to Jan 2011. At the time of such termination, the mgt had neither given the notice of termination notice pay, retrenchment compensation gratuity etc. to the claimant in compliance of the provisions of section 25F, 25G and 25H of the ID Act. No disciplinary action was also taken against him before his termination. There were 14 other co-workmen whose services were regularize by the mgt on the ground that there lands were acquired by the mgt along with this claimant. Being aggrieved he had raised a dispute before the Labour Commissioner and on failure of conciliation the appropriate govt. referred the matter to this Tribunal to adjudicate if a service of the claimant has been illegally terminated. Thus in the claim petition the claimant had prayed for an award to the effect that the benefits to which the deceased claimant is entitled to be granted to his legal heirs as per the provisions 25 F and 25N of the Id act along with any other relief which would be proper in the facts and circumstances of the case.

The mgt filed written statement denying the stands of the claimant. The maintainability of the claim has been challenged on the ground that there exists no Industrial Dispute between the claimant and the mgt. It has been specifically stated that the provisions of section 25F 25G and 25H are not applicable since the service of the claimant was terminated, as admitted by him on account of non performance of duty and disobeying the directives of his monitoring officer. The claimant had raised a dispute before the conciliation officer Dehradun, where it was pointed out that the claimant was working as a casual labour/daily wager for grass cutting and

maintenance of garden. He had worked for a short period as a casual worker and paid wage for the said period. Neither he was a regular employee nor the nature of work executed by him was perennial. Rather the engagement was on need based. Hence, the service of the claimant came to an end automatically when there was no work. The claim of the claimant for reinstatement and continuity of service is not maintainable. It has also been stated that the mgt is a public sector undertaking having it's own rules for recruitment into regular post. The claimant was never appointed as a regular employee. Not only that the claimant had not completed 240 days of work in the preceding calendar year of the alleged termination and as such notice u/s 25F of the ID Act or any kind of compensation was not payable to him. This claimant along with few other workers was found stealing valuable articles from the premises of the mgt and for the said incident FIR was lodged. For loss of confidence, the engagement of the claimant was discontinued. The claimant has not come up with clean hands. Initially he had filed the claim petition claiming his appointment as an Assistant. On realization of the mistake he amended the claim petition. Hence, the reliefs sought cannot be granted to him.

The claimant filed written replication to the w.s of the mgt in which it has been explained that the amendment was for correction of some bona fide mistakes and the earlier claim petition in view of the amendment cannot be looked into.

On these rival pleadings the following issued are framed for adjudication.

Issues

1 Whether the action of the mgt in terminating the service of the workman Parmod Kumar Solanki without complying with 25F and 25N of the ID Act is legal and justified ?

2. To what relief the workman is entitled to and from which date?

The claimant testified as WW1. He proved the documents marked in a series of WW1/1 to WW1/26. The said documents include the wager attendance record the details of arrears on revision of minimum wages etc. The witness was cross examined at length by the mgt. After closer of the evidence of the claimant, when the mgt was called upon to adduce evidence, none turned up to adduce evidence and the mgt evidence was closed by order dated 13.10.2022.

Findings

Issue no.1

It is the stand of the claimant that he was engaged as a casual worker on daily wage basis on 26.02.2007. Though no document has been produced by the claimant to prove the said engagement, the mgt while filling w.s has admitted the date of initial engagement. The mgt has also admitted in the pleading that the claimant was engaged as a casual worker on daily wage basis for maintenance of the garden and grass cutting. It has been alleged by the claimant that on 07.01.2011 when he reported for work the security guard did not allow him entry and showed him a letter dated 05.01.2011 issued by the Deputy CGM R.K Shukla directing that four persons should not be allowed to enter and discharge duty. The said letter has been marked as WW1/11. In the w.s the mgt has stated that for the unruly behavior of the claimant and his involvement in a theft case a decision was taken not to allow the claimant into the premises of the mgt and as such his service was discontinued. The other stand taken by the mgt is that the engagement of the claimant was need based and for non availability of the work his service was discontinued. But surprisingly, no evidence has been adduced by the mgt to prove that the claimant was ever involved in a case of theft or any dissatisfaction was expressed by the Supervising Officer about his non performance. The stand taken in the w.s justifying the action stands not proved. Accordingly it is held that the decision of the mgt in not engaging the claimant who was working continuously from 21.05.2003 to 06.01.2011 without any justification is illegal. This issue is answer in favour of the claimant.

Issue no. 2

The reference has been received to adjudicate on the legality of the termination of the Service of the claimant and what relief he is entitled to. The claimant while adducing oral evidence has stated that his land was acquired by the mgt and the Govt. of Uttar Pradesh has issued a GO directing grant of permanent employment to the persons by the mgt whose land has been acquired. The claimant has filed the said GO as WW1/6. In addition to that he has stated that 14 persons standing in the same footing have been regularized in service by the mgt. But absolutory no evidence has been adduced by the claimant to prove that the policy of the Govt. for giving permanent employment to the land oustees is still in force. Thus, the claim of the claimant for absorbing him in a regular post on account of land acquisition seems not legally justified.

In the preceding paragraph it has been held that the termination of the service of the claimant by the mgt is illegal for non compliance of the provisions of section 25F of the ID Act which is mandatory in nature as has been held by the Hon'ble supreme court in the case **Bhuvnesh Kumar Dwivedi vs. M/s Hindalco Industries ltd. (2014 LAB.I.C. 2643 Supreme Court)**. Now it is to be seen what relief the claimant is entitled to on

account of the said illegal termination. The Hon'ble Apex Court in case of **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya** have held as under:

"The propositions which can be culled out from the aforementioned judgments are:

I) In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

II) Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court to visit instance on lesser wages. If the employer wants to avoid payment of full back wages, then I has to plead and also lead cogent evidence to prove that the employee/workman wads gainfully employed and was getting wages equal to the wages he/she wads drawing prior to the termination of service. This is so because it is settled lat that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments."

In this case the oral evidence of the workman proves that he is unemployed and having no source of income. No rebuttal evidence has been adduced by the mgt. In the case of **Anoop Sharma vs. Executive Engineer Public Health Division Panipat(2010) 5SSF497)** the Hon'ble Apex Court have further held that when the termination of service happens without complying the provisions of section 25F of the ID Act the action of termination becomes nullity and the employee is entitled to continue in the employment as if his service was never terminated. The Hon'ble Apex Court in other cases have also stated that factors which are to be considered while deciding the claim of the claimant for full back wages. The factors are the length of service, the nature of the work, whether regular or perennial, temporary or seasonal nature etc. In this case the claimant had worked for the mgt from 2003 to 2011 i.e. for a period of 8 years. The claim of the claimant that he was discharging function of perennial nature has remained unrebutted. Hence, the Tribunal from the evidence adduced on record is of the opinion that the claimant should be reinstated into service with full back wages for the illegal termination of the service. This issue is accordingly answered in favour of the claimant. Hence ordered.

ORDER

The claim be and the same is allowed in favor of the claimant. It is held that the service of the claimant was illegally terminated by the mgt in complete violation of the provisions of 25 F and 25N of the ID Act and for his unemployment he is required to be reinstated into service with full back wages and continuity of service. The mgt is directed to reinstate the claimant into service within a period of one month from the date of publication of the award and release him the back wages within a further period of one month from the date of reinstatement without interest failing which the amount accrued shall carry interest @of 6% from the date of accrual and till the final payment is made.

Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 9 मई, 2023

का.आ. 761.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूनाइटेड बैंक ऑफ इंडिया प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कानपुर के पंचाट संदर्भ संख्या (98/2018) को प्रकाशित करती है ।

[सं. एल-12012/25/2018 -आई आर (बी-II)]

सलोनी, उप निदेशक

New Delhi, the 9th May, 2023

S.O. 761.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 98/2018) of the Cent.Govt.Indus.Tribunal-cum-Labour Court

Kanpur as shown in the Annexure, in the industrial dispute between the management of United Bank of India and their workmen.

[No. L- 12012/25/2018- IR(B-II)]

SALONI, Dy. Director

ANNEXURE

BEFORE SHRI SOMA SHEKHAR JENA, PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT KANPUR

Present: SOMA SHEKHAR JENA HJS (Retd.)

I.D. No. 98 of 2018

L-12012/25/2018-IR(B-II) dated 02.11.2018

BETWEEN

Member, Working Committee,
UP Bank Workers Organisation,
3/13 Mathura Nagar, ALIGARH(U.P)-

AND

1. The General Manager,
United Bank of India, Head Office,
Personal Adm(Award Staff.11,
Hemanta Basu Sarani,
Kolkata-700001

2. The Chief Regional Manager,
United Bank of India,
80/1, Commercial Complex,
Mangal Pandey Nagar,
Meerut(U.P)-

AWARD

This award arises in respect of the reference mentioned in the schedule stated below as received from the Government of India in letter no. L-12012/25/2018-IR(B-II) dated 02.11.2018

SCHEDULE

1. **"Whether the action of the Regional Manager, United Bank of India, Meerut over the issue of non promoting Shri Brij Mohan S/o Late Shri Ram Swaroop from part time Sweeper to the post of House Keeper-cum-Sub Staff as per Circular No. PA(AS)/ELEVATION4/OM-715/15-16 dated 2.2.2016 is just, fair and legal? If not, what relief of the workman concerned is entitled to" ?**

On receipt of notification, notices were issued to both the parties on 18th December 2018 fixing 25.01.2019 for filing of claim statement. But none appeared on behalf of interested parties on the fixed date. On 12.04.2019 Authorized Representative appeared on behalf of the management and filed an authority letter. After that several dates were fixed for filing the claim statement but none appeared on behalf of the claimant before the Tribunal. Despite giving ample opportunities to the claimant union for submitting statement of claim ; claimant failed to present his case before the Tribunal. On 30.06.2022 the case was reserved for final award for non-appearance of the worker's union.

From the aforesaid circumstances it is presumable that the claimant is not interested in prosecuting the case further before the Tribunal.

Hence in the given circumstances the reference stands disposed of as of 'NIL' award.

Parties are left to bear their respective costs.

Date: 13.07.2022 SOMA SHEKHAR JENA, Presiding Officer

नई दिल्ली, 9 मई, 2023

का.आ. 762.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ बड़ौदा प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कानपुर के पंचाट संदर्भ संख्या (87/2014) को प्रकाशित करती है ।

[सं. एल- 12012/46/2014-आई आर (बी-II)]

सलोनी, उप निदेशक

New Delhi, the 9th May, 2023

S.O. 762.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.87/2014) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Kanpur as shown in the Annexure, in the industrial dispute between the management of Bank of Baroda and their workmen.

[No. L- 12012/46/2014- IR(B-II)]

SALONI, Dy. Director

ANNEXURE

BEFORE SHRI SOMA SHEKHAR JENA, PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT KANPUR

Present: SOMA SHEKHAR JENA HJS (Retd.)

I.D. No. 87 of 2014

L-12012/46/2014-IR(B-II) dated 21.07.2014

BETWEEN

The General Secretary,
National Union of Bank Employees,
C/o Indian Overseas Bank, Hazratganj Branch,
Lucknow:-

AND

The Regional Manager,
Bank of Baroda, Regional Office,
Gumti No. 5,
Kanpur (U.P)-208012

AWARD

This award arises in respect of the reference mentioned in the schedule stated below as received from the Government of India, Ministry of Labour in letter No. L-12012/46/2014-IR(B-II) dated 21.07.2014

SCHEDULE

1. **"Whether the action of the management of Bank of Baroda, Kanpur in not regularizing the services of Shri Manish Kumar w.e.f 20.05.2005 and his subsequent termination is just fair & legal? What relief the workman concerned is entitled to?"**

The averments of the claimant workman may be concisely stated as follows:-

Claimant workman performed the different kinds of tasks like cleaning, taking the dak, tasks related to peon and other assignments which were directed by the Branch Manager and the staff. The claimant workman was paid only Rs 100/- while the work was taken from him took 10 to12 hours. It is vehemently stated by claimant workman that he had demanded for permanency from the date of appointment i.e 20.05.2005 as the work performed by him was of permanent nature and he was the only person in the bank who was doing that

work. When management showed reluctance towards repeated demands of claimant workman for permanency, claimant workman approached the Regional Office. Claimant workman demanded for permanency through letters repeatedly and even several times prayed by meeting the Regional office authorities personally but it was completely fruitless, even he was threatened with dismissal from the work.

It is claimed that the claimant workman had worked for more than 240 days in every year prior to his retrenchment without compliance of mandatory section 25F of Industrial Disputes Act, 1947. It is prayed by the claimant workman that the order of his termination should be held illegal and be quashed and he prays for pass an order to direct the management to reinstate him in the service permanently. Compensation must be provided for the period of unemployment along with other benefits and all the incurred expenditure to fight this case.

In the written statement on behalf of O.P Bank it has been averred that claimant Manish Kumar was never employed by the O.P Bank after selection in mandatory recruitment process. It has been averred by O.P Bank that no letter of appointment was issued in favour of Manish Kumar. It has been pleaded that Manish Kumar was providing snacks and tea at Sarai Maswanpur Branch and he was paid on need based basis. No salary was ever paid to Manish Kumar. In substance, it is pleaded by O.P Bank that Manish Kumar was legally not entitled for any relief as prayer by him under the Industrial Disputes Act, 1947. In the rejoinder it has been averred that only employees of four categories such as permanent employee, probationers, temporary employees and part time employees could be employed by the bank. In the rejoinder it has been further stated that O.P bank has submitted false averments and wages of Manish Kumar were paid through vouchers. In the rejoinder the claimant side reiterated its claim advanced in the statement of claim.

On dates 06.01.2022, 17.02.2022, 28.04.2022, 01.06.2022, 20.07.2022, 13.09.2022, 15.11.2022, 29.11.2022, 08.12.2022, 19.01.2023 and 20.01.2023 the claimant workman did not appear to participate in the proceeding of the case.

Pleadings cannot be read as evidence. A casual worker cannot legally claim absorption in the post of permanent employees of the bank in which recruitment is made under rigid rules.

Hence in the given circumstances the reference stands disposed of as of 'NIL' award.

Parties are left to bear their respective costs.

Date: 06.02.2023 SOMA SHEKHAR JENA, Presiding Officer

नई दिल्ली, 9 मई, 2023

का.आ. 763.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में,केन्द्रीय सरकार बी बी एम बी के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण -सह - श्रम न्यायालय नंबर 1, चंडीगढ़ के पंचाट (संदर्भ संख्या 45/2019) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02.05.2023 को प्राप्त हुआ था।

[सं. एल-23012/32/2019 -आई आर (सी.एम -II)]

मणिकंदन. एन, उप निदेशक

New Delhi, the 9th May, 2023

S.O. 763.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.45/2019*)* of the Central Government Industrial Tribunal-cum-Labour Court NO 1,Chandigarh as shown in the Annexure, in the industrial dispute between the Management of BBMB and their workmen, received by the Central Government on 0*2/05/2023*

[No. L- 23012/32/2019– IR (CM-II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM LABOUR COURT-I, CHANDIGARH.

Present: Sh. J.K. TRIPATHI, Presiding Officer

ID No. 45/2019

Registered on:-20.06.2019

Smt. Savitri Devi Wd/o Late Narainoo & Others,
Village Nehar, PO Haronda, Tehsil Sadar,
Distt. Bilaspur(HP)-174001. ….Workman

Versus

1. The Chairman, Bhakra Beas Management Board,
Madhya Marg, Sector 19-B, Chandigarh-160001.

2. The Chief Engineer, Bhakra Beas Management Board,
BSL Project, Sundernagar-175018. ….Respondents/Managements

AWARD

Passed on:-11.04.2023

Central Government vide Notification No.L-23012/32/2019-IR(CM-II) Dated 31.05.2019, under clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

> **"Whether the action of management of BBMB in not accepting the demand of Smt. Savitri Devi & others, LH/LR of late Narainoo, for declaring his retrenchment /termination as illegal and considering him in continuous service upto age of superannuation resulting in entitlement of consequential benefits is legal, just and valid? If not, to what relief the legal heirs/ legal representatives of late workman are entitled to and from which date?**

1. On the receipt of the above reference, notice was sent to the legal heirs/legal representatives of the deceased-workman as well as to the respondents/managements. The postal article sent to the legal heirs/legal representatives of the deceased-workman, referred above, is duly served upon the legal heirs/legal representatives of the deceased-workman but none is appeared on behalf of the legal heirs/legal representatives of the deceased-workman, which shows that the legal heirs/legal representatives of the deceased-workman is not interested in adjudication of the case on merit nor they have filed any statement of claim to prove their cause against the respondents/managements, as such, this Tribunal is left with no choice, except to pass a 'No Claim Award'. Accordingly, 'No Claim Award' is passed in the present reference.

2. Let copy of this award be sent to the Appropriate Government as required under Section 17 of the Act for publication.

J.K. TRIPATHI, Presiding Officer

नई दिल्ली, 9 मई, 2023

का.आ. 764.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में,केन्द्रीय सरकार बी बी एम बी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय नंबर 1, चंडीगढ़ के पंचाट (संदर्भ संख्या 43/2019) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02.05.2023 को प्राप्त हुआ था।

[सं. एल-23012/31/2019 -आई आर (सी.एम -II)]
मणिकंदन. एन, उप निदेशक

New Delhi, the 9th May, 2023

S.O. 764.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 43/2019*)* of the Central Government Industrial Tribunal-cum-Labour Court NO 1,Chandigarh as shown in the Annexure, in the industrial dispute between the Management of BBMB and their workmen, received by the Central Government on 0*2/05/2023*

[No. L-23012/31/2019– IR (CM-II)]
MANIKANDAN. N, Dy. Director

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, CHANDIGARH.

Present: Sh. J.K. TRIPATHI, Presiding Officer

ID No.43/2019

Registered on:-20.06.2019

Shri Mast Ram S/o Shri Jindu Ram,
R/o Village Masyani, PO Dhalwan,
Tehsil Baldwara, Mandi(HP)-175001. ….Workman

Versus

1. The Chairman, Bhakra Beas Management Board,
Madhya Marg, Sector 19-B, Chandigarh-160001.

2. The Chief Engineer, Bhakra Beas Management Board,
BSL Project, Sundernagar-175018. ….Respondents/Managements

AWARD

Passed on:-11.04.2023

Central Government vide Notification No.L-23012/31/2019-IR(CM-II) Dated 31.05.2019, under clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

> **"Whether the action of management of BBMB in not accepting the demand of Sh. Mast Ram S/o Sh. Jindu Ram for deeming/considering him in continuous service upto age of superannuation and resultantly entitled for consequential benefits is legal, just and valid? If not, to what relief the workman concerned is entitled to and from which date?**

1. On the receipt of the above reference, notice was sent to the workman as well as to the respondents/managements. The postal article sent to the workman, referred above, is duly delivered to the workman. The workman is given sufficient opportunities to file claim statement but none turned up in spite of the opportunity afforded to file claim statement, which shows that the workman is not interested in adjudication of the matter on merit.

2. Since the workman has neither put his appearance nor he has filed any statement of claim to prove his cause against the respondents/managements, as such, this Tribunal is left with no choice, except to pass a 'No Claim Award'. Accordingly, 'No Claim Award' is passed in the present reference.

3. Let copy of this award be sent to the Appropriate Government as required under Section 17 of the Act for publication.

J. K. TRIPATHI, Presiding Officer

नई दिल्ली, 9 मई, 2023

का.आ. 765.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी बी एम बी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय नंबर 1, चंडीगढ़ के पंचाट (संदर्भ सं. 46/2019) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02.05.2023 को प्राप्त हुआ था।

[सं. एल-23012/35/2019 -आई आर (सी.एम -II)]

मणिकंदन. एन, उप निदेशक

New Delhi, the 9th May, 2023

S.O. 765.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.46/2019*)* of the Central Government Industrial Tribunal-cum-Labour Court NO 1,Chandigarh as shown in the Annexure, in the industrial dispute between the Management of BBMB and their workmen, received by the Central Government on 0*2/05/2023*

[No. L- 23012/35/2019– IR (CM-II)

MANIKANDAN. N, Dy. Director

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, CHANDIGARH.

Present: Sh**.** J.K. TRIPATHI, Presiding Officer

ID No. 46/2019

Registered on:-20.06.2019

Smt. Krishni Devi Wd/o Late Ganga Ram & Others,
Village Pantehra, Sub-Tehsil Bharari, Distt. Bilaspur(HP)-174001. …. Workman

Versus

1. The Chairman, Bhakra Beas Management Board,
Madhya Marg, Sector 19-B, Chandigarh-160001.

2. The Chief Engineer, Bhakra Beas Management Board,
BSL Project, Sundernagar-175018. …Respondents/Managements

AWARD

Passed on:-11.04.2023

Central Government vide Notification No.L-23012/35/2019-IR(CM-II) Dated 31.05.2019, under clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

> **"Whether the action of management of BBMB in not accepting the demand of Smt. Krishani Devi & Others, LH/LR of late Ganga Ram, for declaring his retrenchment/termination as illegal and considering him in continuous service upto age of superannuation resulting in entitlement of consequential benefits is legal, just and valid? If not, to what relief the legal heirs/ legal representatives of late workman are entitled to and from which date?**

1. On the receipt of the above reference, notice was sent to the legal heirs/legal representatives of the deceased-workman as well as to the respondents/managements. The postal article sent to the legal heirs/legal representatives of the deceased-workman, referred above, is duly served upon the legal heirs/legal representatives of the deceased-workman but none is appeared on behalf of the legal heirs/legal representatives of the deceased-workman, which shows that the legal heirs/legal representatives of the deceased-workman is not interested in adjudication of the case on merit nor they have filed any statement of claim to prove their cause against the respondents/managements, as such, this Tribunal is left with no choice, except to pass a 'No Claim Award'. Accordingly, 'No Claim Award' is passed in the present reference.

2. Let copy of this award be sent to the Appropriate Government as required under Section 17 of the Act for publication.

J. K. TRIPATHI, Presiding Officer

नई दिल्ली, 9 मई, 2023

का.आ. 766.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में,केन्द्रीय सरकार बी बी एम बी के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय नंबर 1, चंडीगढ़ के पंचाट (संदर्भ संख्या 99/2018) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02.05.2023 को प्राप्त हुआ था।

[सं. एल-23012/159/2018 -आई आर (सी.एम -II)]

मणिकंदन. एन, उप निदेशक

New Delhi, the 9th May, 2023

S.O. 766.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 99/2018*)* of the Central Government Industrial Tribunal-cum-Labour Court NO 1,Chandigarh as shown in the Annexure, in the industrial dispute between the Management of BBMB and their workmen, received by the Central Government on 0*2/05/2023*

[No. L-23012/159/2018 - IR(CM -II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, CHANDIGARH.

Present: Sh. J.K. TRIPATHI, Presiding Officer

ID No. 99/2018

Registered on:-12.12.2018

Smt. Balesaru Devi & Others Wd/o Late Damodar Dass,
Villager Tandi Boh, PO Saroa, Via Pandoh,
Tehsil Chachyot, Distt. Mandi(HP)-175001. ….Workman

Versus

1. The Chairman, Bhakra Beas Management Board,
Madhya Marg, Sector 19-B, Chandigarh-160019.

2. The Chief Engineer, Bhakra Beas Management Board,
BSL Project, Sundernagar-175038. …..Respondents/Managements

AWARD

Passed on:-29.03.2023

Central Government vide Notification No. L-23012/159/2018-IR(CM-II) Dated 22.11.2018, under clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

> **"Whether the action of management of BBMB in not accepting the demands of Smt. Balesaru Devi & Others Wd/o Late Damodar Dass for declaring his retrenchment/termination as illegal and considering him in continuous service upto age of superannuation resulting in entitlement of consequential benefits is legal, just and valid? If not, to what relief the legal heirs/legal representatives of late workman are entitled to and from which date?**

1. On the receipt of the above reference, notice was sent to the LRs of the late workman as well as to the respondents/managements. The postal article sent to the LRs of the late workman, referred above, is duly delivered to the LRs of the late workman. The LRs of the late workman is given sufficient opportunities to file claim statement but none turned up in spite of the opportunity afforded to file claim statement, which shows that the LRs of the late workman is not interested in adjudication of the matter on merit.

2. Since the LRs of the late workman has neither put their appearance nor they have filed any statement of claim to prove their cause against the respondents/managements, as such, this Tribunal is left with no choice, except to pass a 'No Claim Award'. Accordingly, 'No Claim Award' is passed in the present reference.

3. Let copy of this award be sent to the Appropriate Government as required under Section 17 of the Act for publication.

J. K. TRIPATHI, Presiding Officer

नई दिल्ली, 9 मई, 2023

का.आ. 767.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में,केन्द्रीय सरकार बी बी एम बी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय नंबर 1, चंडीगढ़ के पंचाट (संदर्भ संख्या 40/2019) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02.05.2023 को प्राप्त हुआ था।

[सं. एल-23012/28/2019 -आई आर (सी.एम -II)]

मणिकंदन. एन, उप निदेशक

New Delhi, the 9th May, 2023

S.O. 767.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 40/2019) of the Central Government Industrial Tribunal-cum-Labour Court NO 1,Chandigarh as shown in the Annexure, in the industrial dispute between the Management of BBMB and their workmen, received by the Central Government on 02/05/2023

[No. L- 23012/28/2019– IR (CM-II)

MANIKANDAN. N, Dy. Director

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, CHANDIGARH.

Present: Sh. J.K. TRIPATHI, Presiding Officer

ID No. 40/2019

Registered on:-20.06.2019

Shri Sawanu Ram S/o Shri Gulaba Ram,
R/o Village Chambi, PO Shouladhha,
Tehsil Sadar, Mandi(HP)-175001. ….Workman

Versus

1. The Chairman, Bhakra Beas Management Board,
Madhya Marg, Sector 19-B, Chandigarh-160001.

2. The Chief Engineer, Bhakra Beas Management Board,
BSL Project, Sundernagar-175018. …Respondents/Managements

AWARD

Passed on:-11.04.2023

Central Government vide Notification No.L-23012/28/2019-IR(CM-II) Dated 31.05.2019, under clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

"Whether the action of management of BBMB in not accepting the demand of Sh. Sawanu Ram S/o Sh. Gulaba Ram for deeming/considering him in continuous service upto age of superannuation and resultantly entitled for consequential benefits is legal, just and valid? If not, to what relief the workman concerned is entitled to and from which date?

1. On the receipt of the above reference, notice was sent to the workman as well as to the respondents/managements. The postal article sent to the workman, referred above, is duly delivered to the workman. The workman is given sufficient opportunities to file claim statement but none turned up in spite of the opportunity afforded to file claim statement, which shows that the workman is not interested in adjudication of the matter on merit.

2. Since the workman has neither put his appearance nor he has filed any statement of claim to prove his cause against the respondents/managements, as such, this Tribunal is left with no choice, except to pass a 'No Claim Award'. Accordingly, 'No Claim Award' is passed in the present reference.

3. Let copy of this award be sent to the Appropriate Government as required under Section 17 of the Act for publication.

J. K. TRIPATHI, Presiding Officer

नई दिल्ली, 9 मई, 2023

का.आ. 768.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में,केन्द्रीय सरकार बी बी एम बी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय नंबर 1, चंडीगढ़ के पंचाट (संदर्भ संख्या 41/2019) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02.05.2023 को प्राप्त हुआ था।

[सं. एल- 23012/29/2019-आई आर (सी.एम -II)]

मणिकंदन. एन, उप निदेशक

New Delhi, the 9th May, 2023

S.O. 768.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.41/2019) of the Central Government Industrial Tribunal-cum-Labour Court NO 1,Chandigarh as shown in the Annexure, in the industrial dispute between the Management of BBMB and their workmen, received by the Central Government on 02/05/2023

[No. L- 23012/29/2019- IR(CM-II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, CHANDIGARH.

Present: Sh. J.K. TRIPATHI, Presiding Officer

ID No.41/2019

Registered on:-20.06.2019

Shri Devi Ram S/o Shri Sainoo Ram,
R/o Village & PO Khudl, Tehsil Baladwara, Mandi(HP)-175001. ….Workman

Versus

1. The Chairman, Bhakra Beas Management Board,
Madhya Marg, Sector 19-B, Chandigarh-160001.

2. The Chief Engineer, Bhakra Beas Management Board,
BSL Project, Sundernagar-175018. ….Respondents/Managements

AWARD

Passed on:-11.04.2023

Central Government vide Notification No.L-23012/29/2019-IR(CM-II) Dated 31.05.2019, under clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

> **"Whether the action of management of BBMB in not accepting the demand of Sh. Devi Ram S/o Sh. Sainoo Ram for deeming/considering him in continuous service upto age of superannuation and resultantly entitled for consequential benefits is legal, just and valid? If not, to what relief the workman concerned is entitled to and from which date?**

1. On the receipt of the above reference, notice was sent to the workman as well as to the respondents/managements. The postal article sent to the workman, referred above, is duly delivered to the workman. The workman is given sufficient opportunities to file claim statement but none turned up in spite of the opportunity afforded to file claim statement, which shows that the workman is not interested in adjudication of the matter on merit.

2. Since the workman has neither put his appearance nor he has filed any statement of claim to prove his cause against the respondents/managements, as such, this Tribunal is left with no choice, except to pass a 'No Claim Award'. Accordingly, 'No Claim Award' is passed in the present reference.

3. Let copy of this award be sent to the Appropriate Government as required under Section 17 of the Act for publication.

J. K. TRIPATHI, Presiding Officer

नई दिल्ली, 9 मई, 2023

का.आ. 769.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में,केन्द्रीय सरकार बी बी एम बी के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय नंबर 1, चंडीगढ़ के पंचाट (संदर्भ सं. 47/2019) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02.05.2023 को प्राप्त हुआ था।

[सं. एल-23012/36/2019 -आई आर (सी.एम -II)]

मणिकंदन. एन, उप निदेशक

New Delhi, the 9th May, 2023

S.O. 769.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.47/2019) of the Central Government Industrial Tribunal-cum-Labour Court NO 1,Chandigarh as shown in the Annexure, in the industrial dispute between the Management of BBMB and their workmen, received by the Central Government on 02/05/2023

[No. L-23012/36/2019 - IR(CM -II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, CHANDIGARH.

Present: Sh. J.K. TRIPATHI, Presiding Officer

ID No. 47/2019

Registered on:-20.06.2019

Smt. Gangi Devi Wd/o Late Durga Ram & Others,
Village Nehar, PO Haronda, Tehsil Sadar,
Distt. Bilaspur(HP)-174001. ….Workman

Versus

1. The Chairman, Bhakra Beas Management Board,
Madhya Marg, Sector 19-B, Chandigarh-160001.

2. The Chief Engineer, Bhakra Beas Management Board,
BSL Project, Sundernagar-175018. ….Respondents/Managements

AWARD

Passed on:-11.04.2023

Central Government vide Notification No.L-23012/36/2019-IR(CM-II) Dated 31.05.2019, under clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

"Whether the action of management of BBMB in not accepting the demand of Smt. Gangi Devi & Others, LH/LR of late Durga Ram, for declaring his retrenchment/termination as illegal and considering him in continuous service upto age of superannuation resulting in entitlement of consequential benefits is legal, just and valid? If not, to what relief the legal heirs/ legal representatives of late workman are entitled to and from which date?

1. On the receipt of the above reference, notice was sent to the legal heirs/legal representatives of the deceased-workman as well as to the respondents/managements. The postal article sent to the legal heirs/legal representatives of the deceased-workman, referred above, is duly served upon the legal heirs/legal representatives of the deceased-workman but none is appeared on behalf of the legal heirs/legal representatives of the deceased-workman, which shows that the legal heirs/legal representatives of the deceased-workman is not interested in adjudication of the case on merit nor they have filed any statement of claim to prove their cause against the respondents/managements, as such, this Tribunal is left with no choice, except to pass a 'No Claim Award'. Accordingly, 'No Claim Award' is passed in the present reference.

2. Let copy of this award be sent to the Appropriate Government as required under Section 17 of the Act for publication.

J. K. TRIPATHI, Presiding Officer

नई दिल्ली, 9 मई, 2023

का.आ. 770.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में,केन्द्रीय सरकार बी बी एम बी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय नंबर 1, चंडीगढ़ के पंचाट (संदर्भ संख्या 49/2019) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02.05.2023 को प्राप्त हुआ था।

[सं. एल-23012/38/2019 -आई आर (सी.एम -II)]

मणिकंदन. एन, उप निदेशक

New Delhi, the 9th May, 2023

S.O. 770.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 49/2019*)* of the Central Government Industrial Tribunal-cum-Labour Court NO 1, Chandigarh as shown in the Annexure, in the industrial dispute between the Management of BBMB and their workmen, received by the Central Government on 0*2/05/2023*

[No. L- 23012/38/2019- IR(CM-II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM- LABOUR COURT-I, CHANDIGARH.

Present: Sh. J.K. TRIPATHI, Presiding Officer

ID No.49/2019

Registered on:-20.06.2019

Smt. Dromti Devi & Others Wd/o Late Nikka Ram,
Village Sayohli, PO Ratti, Tehsil Mandi (HP)-175001. ….Workman

Versus

1. The Chairman, Bhakra Beas Management Board, Madhya Marg, Sector 19-B, Chandigarh-160001.
2. The Chief Engineer, Bhakra Beas Management Board, BSL Project, Sundernagar-175018. ….Respondents/Managements

AWARD

Passed on:-11.04.2023

Central Government vide Notification No.L-23012/38/2019-IR(CM-II) Dated 31.05.2019, under clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

> **"Whether the action of management of BBMB in not accepting the demand of Smt. Dromti Devi & Others, LH/LR of late Nikka Ram for declaring his retrenchment/termination as illegal and considering him in continuous service upto age of superannuation resulting in entitlement of consequential benefits is legal, just and valid? If not, to what relief the legal heirs/ legal representatives of late workman are entitled to and from which date?**

1. On the receipt of the above reference, notice was sent to the legal heirs/legal representatives of the deceased-workman as well as to the respondents/managements. The postal article sent to the legal heirs/legal representatives of the deceased-workman, referred above, is duly served upon the legal heirs/legal representatives of the deceased-workman but none is appeared on behalf of the legal heirs/legal representatives of the deceased-workman, which shows that the legal heirs/legal representatives of the deceased-workman is not interested in adjudication of the case on merit nor they have filed any statement of claim to prove their cause against the respondents/managements, as such, this Tribunal is left with no choice, except to pass a 'No Claim Award'. Accordingly, 'No Claim Award' is passed in the present reference.

2. Let copy of this award be sent to the Appropriate Government as required under Section 17 of the Act for publication.

J. K. TRIPATHI, Presiding Officer

नई दिल्ली, 9 मई, 2023

का.आ. 771.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में,केन्द्रीय सरकार बी बी एम बी के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय नंबर 1, चंडीगढ़ के पंचाट (संदर्भ संख्या 50/2019) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02.05.2023 को प्राप्त हुआ था।

[सं. एल-23012/39/2019 -आई आर (सी.एम -II)]

मणिकंदन. एन, उप निदेशक

New Delhi, the 9th May, 2023

S.O. 771.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.50/2019) of the Central Government Industrial Tribunal-

cum-Labour Court NO 1,Chandigarh as shown in the Annexure, in the industrial dispute between the Management of BBMB and their workmen, received by the Central Government on 02/05/2023

[No. L- 23012/39/2019- IR(CM -II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM LABOUR COURT-I, CHANDIGARH.

Present: Sh. J.K. TRIPATHI, Presiding Officer

ID No. 50/2019

Registered on:-20.06.2019

Smt. Ram Dei & Others Wd/o Late Hari Man,
Village Sangrana, PO Ranikotla, Tehsil Sadar,
Distt. Bilaspur(HP)-174001. ….Workman

Versus

1. The Chairman, Bhakra Beas Management Board,
Madhya Marg, Sector 19-B, Chandigarh-160001.

2. The Chief Engineer, Bhakra Beas Management Board,
BSL Project, Sundernagar-175018. …Respondents/Managements

AWARD

Passed on:-11.04.2023

Central Government vide Notification No.L-23012/39/2019-IR(CM-II) Dated 31.05.2019, under clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

> **"Whether the action of management of BBMB in not accepting the demands of Smt. Ram Dei & Others, LH/LR of late Hari Man for declaring his retrenchment/termination as illegal and considering him in continuous service upto age of superannuation resulting in entitlement of consequential benefits is legal, just and valid? If not, to what relief the legal heirs/ legal representatives of late workman are entitled to and from which date?**

1. On the receipt of the above reference, notice was sent to the legal heirs/legal representatives of the deceased-workman as well as to the respondents/managements. The postal article sent to the legal heirs/legal representatives of the deceased-workman, referred above, is duly served upon the legal heirs/legal representatives of the deceased-workman but none is appeared on behalf of the legal heirs/legal representatives of the deceased-workman, which shows that the legal heirs/legal representatives of the deceased-workman is not interested in adjudication of the case on merit nor they have filed any statement of claim to prove their cause against the respondents/managements, as such, this Tribunal is left with no choice, except to pass a 'No Claim Award'. Accordingly, 'No Claim Award' is passed in the present reference.

2. Let copy of this award be sent to the Appropriate Government as required under Section 17 of the Act for publication.

J. K. TRIPATHI, Presiding Officer

नई दिल्ली, 9 मई, 2023

का.आ. 772.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ बड़ौदा प्रबंधतंत्र के सबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में

निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कानपुर के पंचाट संदर्भ संख्या (135/2019) को प्रकाशित करती है ।

[सं. एल-12011/05/2019 -आई आर (बी-II)]

सलोनी, उप निदेशक

New Delhi, the 9th May, 2023

S.O. 772.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.135/2019) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Kanpur as shown in the Annexure, in the industrial dispute between the management of Bank of Baroda and their workmen.

[No. L- 12011/05/2019- IR(B-II)]

SALONI, Dy. Director

ANNEXURE

BEFORE SHRI SOMA SHEKHAR JENA, PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT KANPUR

Present: SOMA SHEKHAR JENA, HJS (Retd.)

I.D. No. 135 of 2019

L-12011/05/2019-IR(B-II) dated 01.04.2019

BETWEEN

The General Secretary,
Bank of Baroda Staff Association,
897, Civil Lines, Sitakund,
SULTANPUR-228001

AND

The Deputy General Manager,
Bank of Baroda,
Regional Office, 60/4, 3rd Floor,
FCI Building, Sanjay Place,
AGRA(U.P)-282002

AWARD

This award arises in respect of the reference mentioned in the schedule stated below as received from the Government of India, Ministry of Labour in letter No. L-12011/05/2019-IR(B-II) dated 01.04.2019

SCHEDULE

1. **'Whether the action taken by management of Bank of Baroda, Agra over the issue of alleged non-confirmation of services of Shri Sailendra Kumar beyond six months is just, fair and legal? if not, to what relief the workman concerned is entitled to?'**

On receipt of notification, notices were issued to both the parties on 23th April 2019 fixing 12.05.2019 for filing of statement of claim. Union and claimant workman filed statement of claim on 28.06.2019 while O.P management filed written statement on 27.11.2019. Afterwards several dates were fixed for filing of rejoinder and documents by the union and claimant workman.

On perusal of the record it is found that though several dates were fixed for filing the rejoinder and documents none appeared on behalf of the claimant workman before the Tribunal. Despite ample opportunities to the union and claimant workman for submitting rejoinder and documents; the claimant workman failed to present the case before the Tribunal. On 19.10.2022 the case was reserved for final award for non-appearance of the union and claimant workman. Pleadings are not to be read as evidence.

From the aforesaid circumstances it is presumable that the union and claimant workman are not interested in prosecuting the case further before the Tribunal.

Hence in the given circumstances the reference stands disposed of as of 'NIL' award.

Parties are left to bear their respective costs.

Date: 11.11.2022 SOMA SHEKHAR JENA, Presiding Officer

नई दिल्ली, 9 मई, 2023

का.आ. 773.—औद्योगिक विवाद अधिनियम,1947 1947 का 14 की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन बैंक प्रबंधतंत्र के सबद्ध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 2 दिल्ली के पंचाट संदर्भ संख्या (233/2021) को प्रकाशित करती है।

[सं. एल-39025/01/2023 -आई आर (बी-II) -09]

सलोनी, उप निदेशक

New Delhi, the 9th May, 2023

S.O. 773.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 233/2021) of the Cent.Govt.Indus.Tribunal-cum-Labour Court – II Delhi as shown in the Annexure, in the industrial dispute between the management of Indian Bank and their workmen.

[No. L-39025/01/2023 - IR(B-II) -09]

SALONI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI.

Present: Smt. PRANITA MOHANTY, Presiding Officer, C.G.I.T.-Cum-Labour Court-I, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 233/2021

Date of Passing Award- 10th Feb.,2023

Between:

Shri Zakir Hussain, S/o sh. Iqramul Haq,
R/o House No. RZ-52, Sayed Nangloi, Paschim Vihar,
Delhi-110087 Through Hindustan Engineering & General Mazdoor Union,
D-2/24 Sultanpuri, Delhi-110086. ….Workman

Versus

1. The Branch Manager, Indian Bank,
53,West Avenue Road, Punjabi Bagh, New Delhi-110026.

2. Sood Enterprises,
Plot No. 39, Block -10 Connaught Place,
New Delhi-110001 ….Managements

Appearances:-

Shri Kailash Kumar,(AR) For the claimant .
None for the management For the Managements

AWARD

This is an application filed u/s 2- A of the ID Act by the workman against the management No.1 and 2 praying a direction to the management to reinstate the workman to service with full back wages and all other consequential benefits.

As per the claim statement the claimant was working as a housekeeping staff in the branch of Indian bank at 53, West Avenue Road, Punjabi Bagh, New Delhi on monthly salary 14000 since 01.5.2014. Though he was a direct employee of the management bank, the later in order to deprive him of his lawful rights, had shown him employed through a contractor having name M/s Sood enterprises, C.P, New Delhi. The claimant was working under the direct supervision and control of the mgt bank and getting salary from it. The mgt bank

was never granting him the appropriate wage nor extending other statutory benefits for which he was often raising objection and demand. In a bid of revenge, on 2.09.2019 his service was terminated by the mgt bank illegally. At the time of termination, neither any notice, notice pay or termination compensation was paid to him. The said act of termination was in gross violation of provision of section 25-F, H and G of the Id. Act. The claimant, through the union gave a demand notice to the mgt which was not considered. He then raised a dispute before the Conciliation Officer where steps were taken for conciliation. But for the adamant attitude of the management the conciliation failed and he filed this case before this Tribunal invoking the provision of Section 2A of the Act.

Though notice was sent and served, none of the management appeared and by order dated 1st June, 2022 they were proceeded ex-parte.

The claimant examined himself as WW1 and filed a series of document which have been marked as WW1/1 to WW1/9. These documents include the appointment letter, the demand notice, the claim filed before the conciliation Officer, the reply filed by the mgt no. 2 before the conciliation officer etc.

The claimant in his affidavit evidence has stated that he was working as an employee of mgt no. 1 bank and the introduction of the agency of mgt 2 is sham and designed to defeat his right and the mgt no. 1 be directed to reinstate him to service with all back wages and continuity of service.

Perusal of the documents filed by the claimant it appears that the appointment letter marked as WW1/9 was issued by the mgt no. 2 ie. M/s Sood Enterprises. The said Sood Enterprises while filing reply before the conciliation officer has admitted to have appointed the claimant w.e.f 01.11.2015. The said management admitted to have enrolled the claimant under the ESIC scheme. The claimant has also filed the documents relating to his ESIC membership wherein mgt no. 2 has been described as his employer. Thus, it is held that the mgt no. 2 M/s Sood Enterprises is the employer of the claimant. Now, it is to be seen what benefit the claimant is entitled to. The claimant has stated that his service was illegally terminated without assigning any reason. He was not served with a notice nor the notice pay or termination compensation was paid to him. This evidence of the claimant stands unrebutted and unchallenged. For non compliance of the provisions of Section 25 F and 25 G of the ID act, the order of the termination is held to be illegal and the claimant is held entitled to the reliefs sought for. Hence ordered.

ORDER

The claim be and the same is allowed against the mgt no. 2 and dismissed against the mgt no. 1 bank. The mgt no. 2 is directed to re-instate the claimant in service forthwith and pay him Rs. 2,00,000/- (2 lac) as a lump sum towards back wages and maintain continuity of his service. The mgt no. 2 is further directed to reinstate him in service and pay the compensation within 1 months from the date of the publication of award failing which the lump-sum amount payable towards back wages shall carry interest @ 9% p.a from the date of this order and till the final payment is made.

Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 9 मई, 2023

का.आ. 774.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार केनरा बैंक प्रबंधतंत्र के सबद्ध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चैन्न्ई के पंचाट संदर्भ संख्या (17/2022) को प्रकाशित करती है ।

[सं. एल-12011/24/2022 -आई आर (बी-II)]

सलोनी, उप निदेशक

New Delhi, the 9th May, 2023

S.O. 774.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 17/2022) of the Cent.Govt.Indus.Tribunal-cum-Labour Court

Chennai as shown in the Annexure, in the industrial dispute between the management of Canara Bank and their workmen

[No. L- 12011/24/2022- IR(B-II)]
SALONI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM - LABOUR COURT

CHENNAI

ID No. 17/2022

Present: DIPTI MOHAPATRA, LL.M. Presiding Officer

Date: 01.03.2023

Smt T. Shakila
Rep by The Head Legal and Advisory Forum,
Canara Bank Staff Federation, Tamilnadu State Committee,
No.21/8, Kuppam Beach Road,
Raja Srinivasa Nagar, Chennai,
Tamilnadu 600041. : 1st Party/Petitioner

AND

1. The Asst. General Manager
Canara Bank, HRM section
Circle Office, No.563/1, Anna Salai
Teynampet
Chennai 600006 : First Respondent

2. The Branch Manager
Canara Bank, No.19
North Agraharam Street, Tirupathur Branch,
Tirupathur, Chennai, Tamilnadu 635601 : Second Respondent

3. The General Manager
Canara Bank, Personnel Wing
Head Office, No. 112, JC Road
Bengalure : Third Respondent

Appearance:

For the 1st Party/Petitioner : None
For the Respondents 1 to 3 : None

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-12011 /24/2022(IR(B-II)) dated 18.02.22022 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

"Whether the action of the Managementof Canara Bank in not regularizing the services of Smt. T. Shakilla, Daily Wager is justified? If not, to what relief the workman is entitled to?

2. On receipt of the above reference dtd. 18.02.2022 from the appropriate Government, the dispute was registered as ID No. 17/2022 and due notices were issued to both the parties for their appearance fixing the case to 27.04.2022. Neither the Petitioner nor any Counsel / Authorized Representative turned up. On the other hand,

the notice sent to the Petitioner returned un-served with a postal endorsement as 'Not Known'. Thus the office was directed to issue the fresh notice fixing the case to 03.10.2022. Pursuant to the order, fresh notice was issued to the Petitioner, but again returned un-served. It reveals from the body of reference that while the appropriate Govt. sent the reference dated 18.02.2022 to this Tribunal for adjudication, copies of the reference were sent to the Petitioner and all the opposite parties. It is therefore well presumed that both parties must have received the reference. Therefore, even if the notices returned un-served in two occasions, this Tribunal without resorting any coercive step, but listed to 3 more adjournments i.e 13.10.2022, 02.11.2022 and 15.12..2022, directing the Petitioner to file claim statement and documents. The Petitioner did not turn up nor furnished Claim Statement in any manner available to him. The case was reserved for Final Order.

3. In the circumstance it deems proper not to re-list the case for the same purpose to any other date which would be wastage of the valuable time of this Tribunal.

4. In view of the discussion held supra, it is crystal clear that the petitioner has got no interest to proceed with the case. Thus, the Tribunal is not in a position to adjudicate the dispute as referred by the Appropriate Government as there exist no Industrial Dispute for adjudication as per the reference.

In the result the reference is answered against the petitioner.

An Award is passed accordingly.

DIPTI MOHAPATRA, Presiding Officer

नई दिल्ली, 9 मई, 2023

का.आ. 775.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक त्रावनकोर प्रबंधतंत्र के सबद्ध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चैन्न्ई के पंचाट संदर्भ संख्या (77/2017) को प्रकाशित करती है ।

[सं. एल-12012/51/2016 -आई आर (बी-I)]

सलोनी, उप निदेशक

New Delhi, the 9th May, 2023

S.O. 775.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 77/2017) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Chennai as shown in the Annexure, in the industrial dispute between the management of State Bank Travancore and their workmen

[No. L-12012/51/2016 - IR(B-I)]

SALONI, Dy. Director

ANNEXURE

BEFORE THE CGIT-CUM-LABOUR COURT & EPF APPELLATE TRIBUNAL CHENNAI

ID No. 77/2017

Present: DIPTI MOHAPATRA, LL.M**.** Presiding Officer

Date: 06.02.2023

Sri S. Rajesh
S/o Shanmugam
4/168, Sasthan Kovil Street
Muthulkurichi
Thuckalay Post
Kanyakumari : 1st Party/Petitioner

AND

The Assistant General Manager
State Bank of Travancore
Region-I, Regional Office
C.K.N. Buildings, 24 North Car Street
Nagercoil-629001 : 2nd Party/Respondent

Appearance:

For the 1st Party/Petitioner : Advocates, M/s A. Russel Raj
For the 2nd Party/Respondent : Advocates, M/s S. Makesh

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-12012/51/2016–(IR(B.I) dtd. 28.07.2017 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

"Whether the action of Management of State Bank of Travancore, Regional Office Nagercoil in terminating Sh. S. Rajesh, an Ex-Peon cum Clerk from service w.e.f 13.04.2013 is legal and justified?. If not, to what relief, the workman is entitled to ?

2. On receipt of the above reference from the appropriate Government, the dispute on reference is registered as ID No. 77/2017 and due notices were issued to both sides for their appearance on 04.09.2017 and to many more subsequent dates till the end of year 2017 and some more date in the year 2018 i.e. from 08.01.2018 till 31.10.2018 intervening almost 7 adjournments. No progress was noticed till then as the post of Presiding Officer was lying vacant. Even after the post was filled up, the case was listed to 28.01.2019, the Petitioner did not turn up. resulting further two adjournments i.e. 14.02.2019 and 26.03.2019. The Petitioner filed Claim Statement without any documents resulting some more adjournments till13.08.2019 intervening 3 adjournments. On that day the Respondent filed Counter Statement thus the case was posted to 16.09.2019 directing the Petitioner to file Affidavit Evidence fixing the case to 25.10.2019. The Petitioner did not turn up but the Respondent represented through the Counsel. The case was re-listed to 03.12.2019. On that date, on repeated calls the Petitioner did not appear nor the Affidavit-Evidence was filed. No petition for time was also filed. However in the interest of justice, the case is again re-scheduled to 28.01.2020 and to subsequent three more dates till 12.05.2020. Thereafter due to the outbreak of Pandemic COVID-19 the case was so-moto listed and relisted to several dates in the whole of the year 2020 and also till 30.08.2021 intervening several dates of adjournment. The Petitioner did not appear nor any Proof of Affidavit was filed. The case was again re-scheduled to further dates for the same purpose till 17.03.2022 intervening 4 adjournments. On 17.03.2022, the Petitioner filed Proof of affidavit. As such the case was listed for his Examination-in-Chief and Cross on 03.08.2022. The Petitioner did not turn up to adduce evidence. Even then, the case was so-moto adjourned to further dates i.e. to 17.10.2022 and 01.12.2022. The Petitioner did not appear nor filed the Proof of Affidavit. No Time Petition was also filed for the purpose. It reveals that despite of several adjournments, due to non-participation of the Petitioner in the proceeding there was no progress in the case. The case is simply dragged for five years.

3. It appears the petitioner is not interested to proceed with the case even if sufficient opportunities were afforded to him for appearance and to represent his case. Accordingly it is felt not to list the case to any other date for the same purpose. The Counsel for the Respondent on the other hand humbly submits not to repost the case to any other date but to dispose the same in accordance to Law.

4. In such circumstance, the Tribunal is not in a position to adjudicate the dispute as referred by the Appropriate Government vide dtd. 28.07.2017. The case is liable for dismissal due to non-cooperation and default in appearance of the Petitioner. In the circumstance, it is held proper to dispose of the case without wasting the valuable time of the Tribunal.

In view of the discussion held in preceding paragraph, it deems there exists no dispute for adjudication as referred by the Appropriate Government.

In the result the ID case stands dismissed. An Award is passed accordingly.

Record be sent to appropriate Government under Sec-17 for further follow up action.

DIPTI MOHAPATRA, Presiding Officer

नई दिल्ली, 9 मई, 2023

का.आ. 776.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार केनरा बैंक प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चैन्नई के पंचाट संदर्भ संख्या (35/2020) को प्रकाशित करती है ।

[सं. एल- 39025/01/2023-आई आर (बी-II)-08]

सलोनी, उप निदेशक

New Delhi, the 9th May, 2023

S.O. 776.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 35/2020) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Chennai as shown in the Annexure, in the industrial dispute between the management of Canara Bank and their workmen

[No. L- 39025/01/2023- IR(B-II)-08]

SALONI, Dy. Director

ANNEXURE

BEFORE THE CGIT-CUM-LABOUR COURT & EPF APPELLATE TRIBUNAL CHENNAI

ID No. 35/2020

Present: DIPTI MOHAPATRA, LL.M., Presiding Officer

Date: 22.02.2023

Sri P. Narayanan
No. 81-A, Thirumaraiyur
Nazareth
Tuticorin District
Tamil Nadu : 1st Party/Petitioner

AND

The General Manager
Canara Bank, IR Section
Personal Management Wing
112, JC Road
Bangalore-2 : 2nd Party/Respondent

Appearance:

For the 1st Party/Petitioner : None
For the 2nd Party/Respondent : Advocates, M/s TR Sathiyamohan & R. Narmadha

AWARD

The Central Government, Ministry of Labour & Employment vide its M.No. 7/6/2020-A1 dtd. 17.12.2020 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

"Whether the demand of the workman Sri P. Narayanan, Staff No. 62451 against the Management of Canara Bank, Circle Office, Madurai for reinstatement with all consequential benefits is legal and justified? If not, to what relief the concerned workman is entitled to?

2. On receipt of the above reference, it was registered as ID No. 35/2020 and due notices were issued to both sides for their appearance on 05.03.2021. Due to outbreak of Pandemic COVID-19, the case was simply scheduled and re-scheduled for about 4 dates till 16.11.2021. On that day, the Representing Counsel for the Respondent, though was present, the Petitioner did not turn up resulting adjournment to 13.01.2022. The Petitioner was directed for appearance and for filing of Claim Statement and Documents. On that day, the Petitioner did not turn up nor any Time Petition was filed. Even then, the Tribunal suo-moto adjourned the case to several dates i.e. 01.03.2022, 13.04.2022 and 01.06.2022 directing the Petitioner to file Claim Statement and Documents. The Petitioner did not turn up whereas the Counsel for the Respondent was present on all the dates and raises strenuous objection to re-schedule the case to any more dates. However, for the interest of justice, the Tribunal afforded further chance to the Petitioner for his appearance and filing of Claim Statement. The case was accordingly listed to 28.07.2022. The Petitioner did not appear on repeated calls. The case was again adjourned to 01.08.2022 as last chance. The Respondent though represented through its Counsel, the Petitioner did not turn up nor any Time Petition was filed. In the fact and circumstance, it is felt not to re-schedule the case to any more date but reserve for final order. It is pertinent to mention that since the date of order i.e. 01.08.2022 till the date of final order, neither the Petitioner appeared in person nor represented through any Authorized Representative / Counsel. Not a single Petition has been moved for extension of time. It would not be out of place to state that from the very date of registration, the Petitioner did not appear either in person or through Authorized Representative / Counsel. Besides, it further reveals that despite of several opportunities, though were made available to the Petitioner to appear and to file claim statement, he chose not to appear and file the Claim Statement or else he could have been directed to file Affidavit-Evidence and for his examination in support of his case. It is crystal clear that the Petitioner deliberately failed to appear and file Claim Statement and in fact withheld himself to come to the Witness Box to prove his case. On the other hand, due to non-participation / cooperation of the Petitioner/Applicant, the case is simply dragged for more than 2 years from the date of registration. In view of the discussion held in preceding paragraph, the case is liable for dismissal.

In the result the ID case stands dismissed.

An Award is passed accordingly.

DIPTI MOHAPATRA, Presiding Officer

नई दिल्ली, 9 मई, 2023

का.आ. 777.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चैन्नई के पंचाट संदर्भ संख्या (47/2019) को प्रकाशित करती है ।

[सं. एल-12012/43/2018 -आई आर (बी-I)]

सलोनी, उप निदेशक

New Delhi, the 9th May, 2023

S.O. 777.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.47/2019) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Chennai as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen

[No. L- 12012/43/2018- IR(B-I)]

SALONI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT

CHENNAI

ID No. 47/2019

Present: DIPTI MOHAPATRA, LL.M. Presiding Officer

Date: 22.02.2023

Sri G. Prakash
No. 4/15, Thirupur Kumaran Street

Radha Nagar
Chromepet
Chennai-600044 ….1st Party/Petitioner

AND

The Chief General Manager
State Bank of India
Local Head Office, Chennai Circle
No. 21, Anna Salai
Chennai-600006 ….2nd Party/Respondent

Appearance:

For the 1st Party/Petitioner : Advocates, M/s V. Govardhanan
For the 2nd Party/Respondent : Advocate, Sri S. Makesh

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-12012/43/2018 (IR(B-I) dtd. 19.02.2019 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

"**Whether the claim of Sri G. Prakash, Daftry in the CAC Chennai Branch of erstwhile State Bank of Hyderabad, now State Bank of India against the management for his wrong dismissal from service w.e.f. 15.06.2011 on account of unauthorized absence from duty is fair, legal and justified? If not, what relief the workman is entitled to?"**

2. On receipt of the above reference from the appropriate Government, the dispute on reference is registered in ID No. 47/2019 and notices were issued to both the parties for their appearance fixing the case to 30.04.2019. The Appellant did not turn up. The case is adjourned to 11.06.2019 and further adjourned to 01.07.2019. On that day, the Learned Counsel for the Petitioner files Claim Statement and the case was listed for Counter Statement. On 17.12 2019, the Counsel for the Respondent files Counter. Accordingly the case is listed to 30.01.2020 directing the Petitioner to file Affidavit-Evidence. The Petitioner did not turn up resulting further adjournment to 17.02.2020 and 19.03.2020. The Petitioner failed to comply the direction. Due to outbreak of Pandemic COVID-19, the case was scheduled and re-scheduled to several dates till 02.09.2021 entervening 5 adjournments till 03.02.2022 The Petitioner failed to file Affidavit-Evidence resulting further 4 adjournments as last chance till 27.07.2022. Since then, the case is dragged for such a long period, the Counsel for the Respondent raises objection to re-schedule the case to any other date. However, for the interest of justice, the case was fixed to 18.11.2022 as last chance. On that day, neither the Petitioner nor the Authorized Representative were present. No Time Petition was filed. The case was reserved for final order. It appears that even if for the interest of justice the Tribunal suo-moto afforded sufficient opportunities to the Petitioner, there was no progress in the proceeding due to the non-cooperation of the Petitioner. The non-participation in the proceeding by the Petitioner nor any Authorized Representative on his behalf, constrained the Tribunal not to repost the proceeding to any other date for the same purpose as much as it deems the petitioner has no interest to proceed with the case. Thus, the case is liable for dismissal in accordance to Law.

In view of the discussion held in preceding paragraph, it deems there exists no dispute for adjudication as referred by the Appropriate Government.

In the result the reference is answered against the Petitioner.

An Award is passed accordingly.

DIPTI MOHAPATRA, Presiding Officer

नई दिल्ली, 10 मई, 2023

का.आ. 778.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन बैंक प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट

औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण हैदराबाद के पंचाट संदर्भ संख्या 117/2018) को प्रकाशित करती है।

[सं. एल-12011/59/2018 -आई आर (बी-II)]

सलोनी, उप निदेशक

New Delhi, the 10th May, 2023

S.O. 778.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.117/2018) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Hyderabad as shown in the Annexure, in the industrial dispute between the management of Indian Bank and their workmen.

[No. L-12011/59/2018 - IR(B-II)]

SALONI, Dy. Director

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL -CUM -LABOUR COURT AT HYDERABAD

Present: - Sri IRFAN QAMAR, Presiding Officer

Dated the 12th day of April, 2023

INDUSTRIAL DISPUTE No. 117/2018

Between:

The Honorary President,
Indian Bank Contract, Casual &
Temporary workers Union,
Care-401, MVV Gardens,
L.B. Colony, Visakhapatnam -530017.. .....Petitioner

AND

The Zonal Manager,
Indian Bank,
Zonal Office,
Seshaperan Street,
Chittor – A.P.-517001. … Respondent

Appearances:

For the Petitioner : M/s. R. Yogender Singh, Advocates
For the Respondent: M/s. S. Vikramaditya Babu, S. Mujib Kumar & K. Narasimhulu, Advocates

AWARD

The Government of India, Ministry of Labour by its order No.L-12011/ 59/2018-IR(B.II) dated 20.11.2018 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of Indian Bank and their workman. The reference is,

SCHEDULE

"Whether the transfer order issued to Shri G. Venkataswami, Clerk, Tirumala Branch to Avilala(Tirupathi) is in violation of the pderiodical transfer policy? If so, what relief the workman is entitled to?"

The reference is numbered in this Tribunal as I.D. No. 117/2018 and notices were issued to the parties concerned and the Petitioner entered appearance. Petitioner filed claim statement and Respondent filed counter statement.

2. On the date fixed for hearing Petitioner remained absent. After filing the vakalath, Petitioner did not file any claim statement

3. Respondent bank has filed letters dated 12.11.2019,17.12.2019, 18.12.2019 and 11.3.2020, therein the Respondent has submitted that the Petitioner Mr. G. Venkataswami, SR No.25099, Clerk/Shroff retired last year from Tirupathi branch of Respondent on 31.5.2019 with retirement benefits. A copy of the retired employee's ID is enclosed with the letter. As regards, the issue of transfer of employee from Tirumala branch to Avilala Branch, Tirupathi, the Respondent has submitted that the branches of Tirumala and Avilalal, Tirupathi Branch are in the same Tirupathi centre and there is no violation of periodical transfer policy.

4. After filing vakalath Petitioner did not file any claim statement despite sufficient number of opportunities have been provided to him. It thus becomes crystal clear that the petitioner seems to be not interested in pursuing his case and as such a no claim award is given against the workman/petitioner. As such, a 'No Claim' award is passed.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant, transcribed by her and corrected by me on this the 12th day of April, 2023.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 10 मई, 2023

का.आ. 779.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन ओवरसीज बैंक प्रबंध तंत्र के सबद्ध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण हैदराबाद के पंचाट संदर्भ संख्या (4/2019) को प्रकाशित करती है।

[सं. एल-12012/95/2017 -आई आर (बी-II)]

सलोनी, उप निदेशक

New Delhi, the 10th May, 2023

S.O. 779.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 4/2019) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Hyderabad as shown in the Annexure, in the industrial dispute between the management of Indian Overseas Bank and their workmen.

[No. L-12012/95/2017 - IR(B-II)]

SALONI, Dy. Director

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT AT HYDERABAD

Present: - Sri IRFAN QAMAR, Presiding Officer

Dated the 14th day of March, 2023

INDUSTRIAL DISPUTE No. 4/2019

BETWEEN:

Sri J. Ramesh,
S/o J. Chandraiah,
D. No. 5/487, Chitvel Road,
Railway Kodur,
Y.S.R. District. ….Petitioner

AND

1. The Regional Manager,
Indian Overseas Bank,
Regional Office, No.40-9-27, 1st floor,
Near Benz Circle, Ringh Road,
Vijayawada – 520 008.

2. The Branch Manager,
Indian Overseas Bank,
Railway Station Road, Beside
Bramarmba Theatre,
Venkatagiri – 524132. ….Respondents

Appearances:

For the Petitioner : Sri B .Kiran Kumar, Advocate
For the Respondent : M/s. Alluri Krishnam Raju, S. Ramesh & V. Nagarjuna, Advocates

AWARD

The Government of India, Ministry of Labour by its order No. L-12012/ 95/2017-IR (B.II) dated 9.3.2018 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of Indian Overseas Bank and their workman. The reference is,

SCHEDULE

"Whether the action of the Management of Indian Overseas Bank, Vijayawada in termination of Sri J. Ramesh on 15.1.2017 alleged to be working form 23.3.2013 is legal and justified? If not, what relief the workman is entitled to?"

The reference is numbered in this Tribunal as I.D. No. 4/2019 and notices were issued to the parties concerned.

2. Petitioner is absent on the date of hearing. Respondent is present. Petitioner is absent since long time. Sufficient number of opportunities have been provided to the Petitioner but he did not file claim statement. It seems that he do not want to prosecute his case. Therefore, a no claim award is given against the workman/petitioner. As such, a 'No Claim' award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, corrected by me on this the 14th day of March, 2023.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 10 मई, 2023

का.आ. 780.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मुख्य महाप्रबंधक, दूरसंचार, बीएसएनएल, एबिड्स, हैदराबाद; सहायक महाप्रबंधक (प्रशासन), ओ/ओ सीजीएमटी, ए.पी. सर्किल, हैदराबाद, के प्रबंधतंत्र के संबद्ध नियोजकों और श्री कोला वेंकटेश्वरलू, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय-हैदराबाद के पंचाट (संदर्भ सं.15/2017) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 10.05.2023 को प्राप्त हुआ था।

[सं. एल-42025-07-2023-86 -आई आर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 10th May, 2023

S.O. 780.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 15/2017) of the Central Government Industrial Tribunal cum Labour Court – Hyderabad as shown in the Annexure, in the Industrial dispute between the employers in relation to The Chief General Manager, Telecommunications, BSNL, Abids, Hyderabad ;The Assistant General Manager (Admn.),O/o CGMT, A.P. Circle, Hyderabad, and Shri Kola Venkateswarlu, Worker, which was received along with soft copy of the award by the Central Government on 10.05.2023.

[No. L- 42025-07-2023-86-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM- LABOUR COURT AT HYDERABAD

Present: - Sri IRFAN QAMAR, Presiding Officer

Dated the 26th day of April, 2023

INDUSTRIAL DISPUTE L.C. No. 15/2017

Between:

Sri Kola Venkateswarlu,
S/o Somaiah,
R/o Bonakal Station, Bonakal(M),
Khammam District. – 507204 …. Petitioner

AND

1. The Chief General Manager,
Telecommunications, BSNL,
Abids, Hyderabad.

2. The Assistant General Manager (Admn.)
O/o CGMT, A.P. Circle,
Hyderabad – 1. ….Respondents

Appearances:

For the Petitioner : M/s. M.V. Hanumantha Rao, Advocates
For the Respondent: Sri S. Prabhakar Reddy, Advocate

AWARD

Sri Kola Venkateswarlu, who worked as Mazdoor (who will be referred to as the workman) has filed this petition under Sec. 2A(2) of the Industrial Disputes Act, 1947 against the Respondents, Railway Electrification Project (REF), BSNL, Secunderabad seeking for declaring the proceeding No. TA/STB/20-2/REP/06-10/25 dated 27.4.2010 issued by the Respondent as illegal, arbitrary, discriminatory, violative of principles of natural justice and to set aside the same consequently directing the Respondents to regularize or re-engage the Petitioner into service duly granting all the consequential benefits and such other reliefs as this court may deems fit.

2. **The averments made in the petition in brief are as follows**:

It is submitted that the Petitioner has worked as Mazdoor in Railway Electrification Project(REF) Secunderabad to Nagpur from 1.1.1994 to 30.9.1996 for 1004 days along with others. The Petitioner submitted that thereafter he along with others continued on voucher payment basis for some time and thereafter on contract basis. Petitioner along with others has been requesting for regularization or to provide regular work still no action has been taken by the department, though they have worked for a considerable period. Further, petitioner came to know that by proceedings dated 21.11.2000 similarly situated 79 persons have been regularized by giving them "temporary status" by the respondent, in fact those persons are juniors to the petitioner and other similarly situated persons. Petitioner hails from poor family and have been pursuing the authorities since long time with a hope that the department would consider her claim in a positive manner. Petitioner submits that, as there was no action taken by the respondents he along with others approached Hon'ble Central Administrative Tribunal, Hyderabad Bench, at Hyderabad by filing OA. Nos. 100/10 and 101/10 and the Hon'ble Tribunal after hearing both the parties disposed of the OAs, on 10.2.2010 with specific directions "since the applicants in the OA also have similar claims as the applicants in the WP.No.12872/08, I consider it appropriate to dispose of this Original Application by giving a direction to the applicants to file individual representations to the respondents giving full details namely, their addresses, places at which they were engaged, the period for which they were engaged etc., within a period of 4 weeks and on receipt of such representations, the respondents shall examine their applications with reference to the records and the scheme that was in force and pass orders within a period of 3 months from the date of receipt of such representation." It is submitted that, as per the orders of the Hon'ble Tribunal the petitioner and others have submitted elaborate representations to the Respondent No.1 along with order passed by Hon'ble Tribunal and also attendance book etc. on 3.3.2010 the Respondent No.1 instead of appreciating the circumstances and without proper verification of records and without providing opportunity of being heard, Respondent has issued the impugned letter dt.8.6.2010 stating,

"i) With reference to the representation, pursuant to the directions of the Hon'ble Tribunal dated 10.2.2010 in OA. No.100/10 it is informed that the same has been duly considered having regard to the policy and availability of records and it is regretted that it is not open to re-engage you as casual labours or grant of temporary status under the scheme dt.7.10.1989 which has exclusive application to casual labour who have engaged prior to 31.10.1985 up to 22.6.1988 and continued as such. The following have duly taken into consideration for the aforesaid decision. All the casual labors who were eligible as per letter dt.29.9.2000 of DOT were regularized as one time measure.

(ii) Records pertaining to Railway electrification Project are not available for due verification of information furnished by you as they were weeded out as per the retention schedule. The letter of appointment and payment thereof is requisite record to verify your engagement from 1.1.1994 to 30.9.1996 and the basis for the same while DOT, New Delhi letter No.270-6/84-STN dt.22.6.1988 imposed ban on engagement of casual labours including project circle.

(iii) The certification by the Divisional Engineer about such engagement is not acceptable in the absence of records as indicated above.

(iv) It is stated that you have been disengaged as casual labour and also thereafter continued with contractor and thus there is no employer-employee relationship at any point of time thereafter and as such there is no scope to re-engage you as casual labour and also in view of the complete ban as per DOT, New Delhi letter no.269-4/93 STN-II dt. 12.2.1999 and further affirmed vide letter no.269-4/93/STN Il dt.15.6.1999 and the said policy is continuing.

v) The violation of provisions of Sec.25F of ID Act, 1947 having questioned in the appropriate forum at any time and as such disengagement has become final for all purposes.

vi) This disposes of your representation and it is hereby clarified that no further correspondence will be entertained on this subject."

Petitioner submitted that the proceedings dated 27.4.2010 are ex.facie illegal, arbitrary, discriminatory and contrary to record and violative of principles of natural justice and violative of Art. 14 and 16 of Constitution of India. It is submitted when similarly situated persons were regularized the respondent ought to have extended the same benefit to the petitioner also. Further, the reasoning recorded by the respondent as mentioned in the clause-(i) of the impugned order stating that benefit of extension of temporary status under scheme dated 7.10.1989 is only for casual labours who have engaged prior to 31.10.1985 up to 22.6.1988 is not tenable and when the department had extended similar benefit to similarly situated persons and having extracted work from the petitioner during subsequent period, denial of said benefit amounts discrimination. The contention of the respondents as mentioned in clause-(ii), records pertaining to Railway Electrification Project are not available as have weeded out as per the retention schedule is also not tenable. It is submitted non-availability of the records in the department cannot be attributed to the petitioner and respondent ought to have accepted the records produced by the petitioner. It is submitted regarding para no (4) of the impugned order that when similarly situated persons were engaged and records shows the services rendered by the petitioner the contention that there is no relationship as employer and employee is also not tenable. Clause (5) of the order is not maintainable in respect of the claims of petitioner as he has been pursuing with the department to re-engage him in the respondent department in view of their past experience. The petitioner is having record and also the department had considered similarly situated persons as such the petitioner is entitled for relief. It is submitted that the impugned order is not only illegal but also contrary to earlier directions issued by the Hon'ble Central Administrative Tribunal as such as a last resort the petitioner is approaching this Hon'ble court. The petitioner, along with others approached Hon'ble Central Administrative Tribunal Hyderabad Bench at Hyderabad and filed OA. No. 1229/2010 and after hearing both the sides the Hon'ble Tribunal has directed the applicants therein to approach concerned Labour court under Industrial Dispute Act, 1947 and hence, this petition. It is submitted the petitioner and others have filed their concerned days book duly signed by the employer on every month ending, identity card, etc., the days book clearly postulates all the relevant information of the petitioner with regard to work i.e. MRPTS work, cable work, or alignment, store work, etc., and Petitioner was paid Rs.60/- per day. It is therefore prayed that this Hon'ble Tribunal may be pleased to i) Declare the impugned letter No.TA/STB/20-2/REP/06-10/25 dated 27.4.2010 issued by the respondent as illegal arbitrary, discriminatory and violative of principles of natural justice and consequently set aside the said letter.

3. **The Respondents filed counter denying the averments made in the petition, with the averments in brief which runs as follows**:

The Respondent submitted that the claim petition is misconceived and is barred by limitation. There is no engagement of casual labour in BSNL, after 1.10.2000 and the casual labour who have been engaged as such before the imposition of ban vide letter No.270/6/84-STN, New Delhi dated 30.3.1985 and letter No.270-6/84-STN dated 22.6.1988 for the project circles and the line dismantling in the Electrification project circles have been continued in BSNL as a matter of policy and the Petitioner having been engaged in the project after the imposition of ban vide letter dated 22.6.1988 is not covered by the policy thereof and it is not open for the Petitioner to assert for reengagement or regularization under the said policy. The claimant is confusing the Hon'ble Tribunal with regard to the letter No.TA/STB/20-2/REP/06-10/22 dated 27.4.2010 pursuant to the directions of the Hon'ble Central Administrative Tribunal dated 10.2.2010, in OA No.100/2010 filed in continuation of WP No.12872/2008 in the High Court seeking for the identical relief and the communication dated 27.4.2010 based on the directions dt.10.2.2010 in O.A.No.100/2010 to comply with a judicial order notwithstanding the fact that the said O.A.No.100/2010 is misconceived and not maintainable having regard to the definition of employee in Rule 3(8) of BSNL & CDA Rules, 2006 implemented as such from 10.1.2006 thereby leaving no scope to exercise any jurisdiction by the Hon'ble Tribunal and on 28.2.2011 in O.A.No.1229/2010. It is not open for the claimant to assail the same before this Hon'ble Court in any manner for any purpose. The Railway Electrification project for line dismantling is distinct and different and the said project is out side jurisdiction of the respondent thereby leaving no scope to reengage any casual labour engaged by the said projects organization after the imposition of the ban and disengaging thereafter and entrustment of the work to a contractor thereby leaving no scope for reengagement and regularization as per the settled law. The Petitioner is relying on the documents which do not form part of the record of the respondent without any letters of engagement and payment particulars while the maintenance of the records in not the administrative concern of the answering respondent and no records as such are maintained after the expiry of three years relating to muster roll as per the retention schedule. It is therefore prayed that this Hon'ble Tribunal may be pleased to dismiss the claim petition.

4. Petitioner filed chief examination affidavit and examined himself as WW1 reiterating the facts stated in claim petition stated that, he has worked as Mazdoor (casual labour) in Railway Electrification Project (REF) Secunderabad to Nagpur from 1.1.1994 to 30.9.19996 for 1004 days along with others. Thereafter, he, along with others continued on voucher payment basis for some time and thereafter on contract basis requesting for

regularization and no action has been taken by the department, though they have worked for a considerable period. Petitioner marked Photostat copies of documents which were marked as Ex.W1 to W13. During the cross examination Petitioner stated that he worked from 1994 to 1996 in the Railway Electrification Project and again he worked in the office of Divisional engineer, Secunderabad for two years. He do not know whether that project exists or not.

5. Respondent did not adduce any evidence on their behalf. Both parties filed written arguments as well as submitted oral arguments.

6. Heard. Perused the record.

7. **The following points arise for consideration**:-

I. Whether the Petitioner is eligible to be regularized as temporary status with Respondent employment under the scheme Casual Labourers (Grant of Temporary Status and Regularization) Scheme 1989?

II. Whether order dated 27.4.2010 passed by Respondent on Petitioner's representation is just?

III. To what relief if any, the Petitioner is entitled?

Findings:

8. **Points No.I & II**: Before proceeding to determination on points, it would be relevant to narrate the facts in the back drop of the matter. As pleaded by Petitioner workman Sri Kola Venkateswarlu, he has worked as mazdoor (casual labour) in Railway Electrification Project, Secunderabad to Nagpur from 1.1.1994 to 30.9.1996 for 1004 days along with others. The Petitioner along with others continued on voucher payment basis for some time and thereafter on contract basis. He along with others have been requesting for regularization and to provide the regular work. Still no action has been taken by the Department, though they have worked for a considerable period. It is also pleaded that Petitioner came to know that by proceedings dated 21.11.2000 similarly situated 79 persons have been regularized by giving them temporary status by the Respondents. Since no action was taken by the Respondents he along with others approached Hon'ble Central Administrative Tribunal, Hyderabad Bench at Hyderabad by filing OA No.100/10 and 101/10 and the Hon'ble Tribunal after hearing both the parties disposed of the OAs, on 10.2.2010 with specific direction which reads as follows: "since the applicants in the OA also have similar claims as the applicants in the WP No.12872/08, I consider it appropriate to dispose of this OA by giving a direction to the applicants to file individual representations to the respondents giving full details namely, their addresses, places at which they were engaged, the period for which they were engaged etc., within a period of 4 weeks and on receipt of such representations, the respondents shall examine their applications with reference to the records and the scheme that was in force and pass orders within a period of 3 months from the date of receipt of such representation." The Petitioner in compliance of the above order moved representation dated 3.3.2010 to the Respondent authority and Respondent rejected the representation by passing impugned order dated 27.4.2010. Against this impugned order present industrial dispute petition has been filed by the workman before the Tribunal. It is also submitted that the Petitioner along with others have challenged impugned order dated 27.4.2010 rejecting the representation of Petitioner and filed OA No.1229/2010 and after hearing both the sides Hon'ble Tribunal has directed the applicant to approach the labour court under I.D. Act, 1947. The copy of the order dated 28.2.2011 passed in OA No.1229/2010, G. Pentaiah and others Vs. Union of India has been filed wherein Hon'ble Tribunal has observed as below:

> "8. Admittedly, the applicants were engaged between 1.1.1994 and 30.9.1996 and they do not come under the scope of the scheme. However, a direction was given by this Tribunal earlier to examine their cases since the applicants claimed that some juniors who were appointed subsequently had been regularized. I now find that the Respondents have rejected the claim on the ground that relevant records have been weeded out. the matter raised disputed questions of fact viz., whether the applicants were employed as casual labourers for more than 1000 days and whether they are eligible for temporary status, etc. In the absence of records, it is not possible for this Tribunal to adjudicate this matter.
>
> 9. I, therefore, dispose of this application with a direction to the applicants to approach the labour authorities under the Industrial Disputes' Act, 1947, if they are so advised, with all the relevant material so that a decision on their eligibility for temporary status or otherwise can be taken by the Respondent authorities. The Learned Counsel for the applicants has no objection to such a direction being given."

Therefore, in view of the above direction of Hon'ble Central Administrative Tribunal, we proceed to decide to determine the question whether the applicant was engaged as casual mazdoor for more than 1000 days and they are eligible for temporary status.

9. In this regard, the Petitioner has pleaded that he has got engaged as mazdoor(casual labour) in Railway Electrification Project, Secunderabad to Nagpur form 1.1.1994 to 30.9.1996 for 1004 days along with others. It is also submitted that he along with others continued as such on voucher payment basis and later on contract basis.

10. On the other hand the Respondent has filed counter stating therein that there is no engagement of casual labour in BSNL after 10.10.2000 and the casual labour who have been engaged as such before the imposition of ban vide letter No.270/6/84-STN, New Delhi dated 30.3.1985 and letter No.270-6/84-STN dated 22.6.1988 for the project circles and the line dismantling in the Electrification project circles have been continued in BSNL as a matter of policy and the Petitioner having been engaged in Railway Electrification Project after the imposition of ban in project circles vide letter dated 22.6.1988 is not covered by the policy thereof and it is not open for the Petitioner to assert for reengagement or regularization under the said policy. It is submitted that the Petitioner is not covered under the definition of employee with Rule 3 sub clause 8 of BSNL & CDA Rules, 2006. Therefore, it is not open for the claimant to assail the same in any manner for any purpose. It is also submitted that Railway Electrification Project for line dismantling is distinct and different and the said projects is out side jurisdiction of the answering Respondent thereby leaving no scope to reengage any casual labour engaged by the said projects organization after the imposition of the ban and disengaging thereafter and entrustment of the work to a contractor thereby leaving no scope for reengagement and regularization as per the settled law. It is clear from pleadings of the parties that the Petitioner had worked as a mazdoor in Railway Electrification Project of the Respondent on contract basis. The Petitioner has submitted the documents in support of his allegation which are: Ex.W1 is photocopy of orders dated 27.4.2010. Ex.W2 is a copy of representation dated 3.3.2010. The last para of the representation reveals that Petitioner has prayed for relief from Respondent to provide him employment, whereas in petition he has sought relief of regularization in the Respondent employment. Document Ex.W3 and W4 are photocopies of the orders of Hon'ble Central Administrative Tribunal passed in OA 1229/2010 and 100/2010. Other document Ex.W5 is photocopy of order passed in OA No.101/2010 dated 10.2.2010. The documents Ex.W6 to W9 are photocopies of the proceedings which were supplied by the Respondent to the Petitioner which contains list of casual labour. Ex.W10 is photocopy of letter regarding temporary status and Ex.W11 is the attendance sheets of the workman Petitioner which has been signed by Divisional Engineer, Telecom, Secunderabad which reveals that the Petitioner has worked as mazdoor from 1.1.1994 to 30.9.1996 in Railway Electrification Project.

11. **It would be relevant to reproduce the provision of Sec.2(oo)(bb) of I.D. Act, 1947 which provide that,**

" (oo) "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include:-

(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; "

12. **The Hon'ble Apex Court in the case of S.M. Nilajkar and ors. Vs. Telecom, District Manager has held:** " the termination of the service of workman engaged in a scheme or project amounts to retrenchment within the meaning of sub-clause (bb) subject to the following provision being satisfied:

i) That the workman was employed in a project or scheme of temporary duration;

ii) The employment was on contract and not as a daily wager simplicitor, which provided inter alia that the employment shall come to an end on the expiry of the scheme or project; and

iii) The employment came to an end simultaneously with the termination of the scheme or project and consistently with the terms of the contract.

iv) The workman ought to have been apprised or made aware of the above said terms by the employer at the commencement of employment.

13. Since the Petitioner has alleged that he has worked as mazdoor from 1.1.1994 to 30.9.1996 in the Railway Electrification Project as contract labour. It goes to show that Petitioner has worked in the

Respondent employment on a project which is open for a limited time and after completion of the project the Petitioner cannot claim any employment or regularization in the service of the Respondent. As far as the contention of the Petitioner is concerned that he should be regularized as other casual workers regularized under the scheme, it is settled law that any contract workman has no right to seek regularization of employment from employer, since it is a matter of discretion of the employer. Even otherwise, if a fresh contract contemplated to secure employee appointment with higher qualification or seek a fresh job on contractual employment having more skills, the employer will always have an authority to decide what is best for improving its functioning and which can be depend on work requirements.

14. Petitioner contended that Respondent has mentioned that in the impugned order the record pertaining to Railway Electrification Project are not available for due verification of the information furnished by the Petitioner. As they have weeded out as per retention schedule. The letter of appointment and payment thereof is requisite record to verify the engagement from 1.1.1994 to 30.9.1996. It is the duty of the authority to protect official files and record, it would be worthy to mention here that Petitioner had worked as Mazdoor in Respondent project for the period 1994-1996 as contract labour and he raised present industrial dispute by filing the petition u/s 2A(2) of the I.D. Act, 1947 in July, 2012. Long span of time more than 15 years have elapsed. Respondent in his counter has stated that no record as such are maintained after the expiry of three years relating to the muster roll as per the retention schedule. Since there was gross latches of inordinate delay on the part of Petitioner in raising present industrial dispute. Respondent is not supposed to maintain record of contractual labour beyond retention schedule. Therefore, in the case of non-production of the record by the Respondent, no adverse inference can be drawn against him in this case.

15. Respondent submitted that there is no engagement of casual labour in BSNL after 1.10.2000 and the casual labour who have been engaged before the imposition of the ban vide letter No.270/6/84-STN dated 30.3.1985 and letter No.270-6/84-STN dated 22.6.1988 for the project circles and the line dismantling in the Electrification project circles have been continued in BSNL as a matter of policy and the Petitioner having been engaged in Railway Electrification Project after the imposition of ban in project circles vide letter dated 22.6.1988 is not covered by the policy thereof and it is not open for the Petitioner to assert for reengagement or for regularization under the said policy. The Respondent has submitted the copy of letter No.270/6/84-STN dated 30.3.1985 wherein it is mentioned that the Telecom Department has directed to stop the recruitment or employment of casual labour of any kind, any type of work. Further, copy of letter No.270-6/84-STN dated 22.6.1988 which is regarding casual labour recruitment wherein it is mentioned (para 2) that, there shall be no recruitment of casual labour even for specific period and it was directed to Respondent Department to engage from neighbouring divisions, employed for the project or electrification work. Further, the copy of the letter of DG Telecom, New Delhi dated 7.11.1989 has been filed wherein it is mentioned that the casual labourers could be engaged after 30.3.1985 in projects and Electrification Circles only for specific works and on completion of the work the casual labourers so engaged were required to be retrenched. It is also mentioned that as per the direction in letter dated 22.6.1988 fresh recruitment of casual labourers even for specific works for specific periods in Projects and Electrification Circles also should not be resorted to. Therefore, in view of the ban on engagement of casual labourers the claim of the Petitioner is not maintainable. Since the Petitioner was engaged through contractor in the Railway Electrification Project which was meant for a specific period and after completion of the project work his employment is terminated and he is not eligible to claim for regularization in view of above letters and his status as contract labour.

16. Now the question arises whether there existed employee and employer relationship between the claimant and Respondent. Petitioner has admitted the fact that he was doing the work as a contract labourer in the Respondent Department. Further, to prove the employment there has to be a strict evidence to show some nexus between the claimant and the Respondent. This can be any kind such as appointment letter, monthly payment slip, deduction of Provident Fund, payment of any dues, which can show that he was in the employment of the Respondent. **In the case of Automobile Association of Upper India vs. Presiding Officer Labour Court-II, 2006 LLR page 851 wherein the** Hon'ble Delhi High Court held, *" Engagement and appointment in service can be established directly by the existence and production of appointment letter, a written agreement or by circumstantial evidence of incidental and ancillary records which would be in the nature of attendance register, salary registers, leave records, deposit of Provident Fund contribution and employees state insurance contribution etc.. The same can be produced and proved by the workers or he can call upon and caused the same to be produced and proved by calling for witnesses who are required to produce and prove these records."*

17. But in the present case the claimant Petitioner has not produced any single piece of evidence showing that he was issued appointment letter by the Respondent. In fact, he has not disclosed date of actual joining of the employment as casual labour of the Respondent. Therefore, the contention of the Petitioner that he was

casual labourer is not found to be proved by his evidence. Hence, he was not covered under Regularization Scheme rather he was contract labour as he has admitted in petition.

Thus, Points No.I & II are answered accordingly.

18. **Point No.III**: In view of the above discussion, it is clear that the Petitioner was not a casual labourer, rather had worked as contract labour for the period from 1994 to 1996. Therefore, Petitioner is not eligible to be regularized as a casual labour in the Respondent employment. The impugned order dated 8.6.2010 passed by Respondent needs no interference and petition is liable to be dismissed. In view of the finding given in Points No.I & II, the Petitioner is not entitled to any relief as prayed for regularization or reengagement. However, the Respondent has submitted that this Tribunal has disposed of LC No.8/2012 vide its order dated 29.2.2020 and granted relief of compensation to the Petitioner. In view of the foregone discussion, it is clear that the Petitioner was engaged as a casual labour for the period from 1994 to 1996 and number of days he worked has been verified by the Divisional Engineer as the Petitioner has filed the documentary evidence in support of his claim.

19. **In this regard Hon'ble Apex Court in the case of Hari Nandan Prasad Vs Employer I/R to management of FCI in Civil Appeal No.2417-2418 of 2014 dated 17.02.2014 held and laid down that :-**

"in the case of BSNL VS. Bhurumal 2013 (15) SCALE 131 which has taken note of the earlier case law relevant to the issue. Following passage from the said judgment would reflect the earlier decisions of this Court on the question of reinstatement: "The learned counsel for the appellant referred to two judgments wherein this Court granted compensation instead of reinstatement. In the case of BSNL Vs. Man Singh (2012) 1 SCC 558, this Court has held that when the termination is set aside because of violation of Section 25-F of the Industrial Disputes Act, it is not necessary that relief of reinstatement be also given as a matter of right.

However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice."

Therefore, in view of the above, Petitioner is liable for getting the compensation of Rs.50,000/.

Thus, Point No.III is answered accordingly.

ORDER

In view of the findings given above, it is hereby ordered: The petition of the Petitioner is allowed in part. The Respondents are directed to pay a sum of Rs.50000/- (Fifty thousand rupees) to the Petitioner towards compensation within four months from the receipt of this order, failing which the Petitioner is at liberty to take appropriate steps according to Law.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 26th day of April, 2023.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri K. Venkateswarlu	MW1: Nil

Documents marked for the Petitioner

Ex.W1: Photostat copy of orders dated 27.4.2010

Ex.W2: Photostat copy of the Representation of WW1 dt.3.3.2010

Ex.W3: Photostat copy of order passed in OA. No. 1229/2011

Ex.W4: Photostat copy of order passed in OA. No. 100/2010

Ex.W5: Photostat copy of order passed in CA. No. 101/2010

Ex.W6: Photostat copy of proceeding of respondent dt 9-5-2007

Ex.W7: Photostat copy of proceeding of Director, BSNL Railway Electrification Project Secunderabad dt. 12 9-2002

Ex.W8: Photostat copy of list of candidates issued by Div. Engineer, Secunderabad dt. 11-9-2002

Ex.W9: Photostat copy of proceeding Dt. 13-11-2007 providing information under RTI Act

Ex.W10: Photostat copy of letter dt.21-11-2000 with regard to temporary status

Ex.W11: Photostat copy of Days Book signed by authority

Ex.W12: Photostat copy of Identity card of petitioner certificate issued by the conciliation officer

Ex.W13: Photo copy of certificate dt.9.6.2014

Documents marked for the Respondent

NIL

नई दिल्ली, 10 मई, 2023

का.आ. 781.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मुख्य महाप्रबंधक, दूरसंचार, बीएसएनएल, एबिड्स, हैदराबाद; सहायक महाप्रबंधक (प्रशासन), ओ/ओ सीजीएमटी, ए.पी. सर्किल, हैदराबाद, के प्रबंधतंत्र के संबद्ध नियोजकों और श्री वेपचेदु रामेश्वर राव, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण-सह- श्रम न्यायालय-हैदराबाद के पंचाट (संदर्भ संख्या 14/2012) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 10.05.2023 को प्राप्त हुआ था।

[सं. एल- 42025-07-2023-88-आईआर(डीयू)

डी. के. हिमांशु, अवर सचिव

New Delhi, the 10th May, 2023

S.O. 781.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 14/2012) of the Central Government Industrial Tribunal cum Labour Court – Hyderabad as shown in the Annexure, in the Industrial dispute between the employers in relation to The Chief General Manager, Telecommunications, BSNL, Abids, Hyderabad ;The Assistant General Manager (Admn.),O/o CGMT, A.P. Circle, Hyderabad, and Shri Vepachedu Rameswara Rao, Worker, which was received along with soft copy of the award by the Central Government on 10.05.2023.

[No. L- 42025-07-2023-88-IR (DU)

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL -CUM -LABOUR COURT AT HYDERABAD

Present: - Sri IRFAN QAMAR, Presiding Officer

Dated the 3rd day of March, 2023

INDUSTRIAL DISPUTE L.C.No. 14/2012

Between:

Sri Vepachedu Rameswara Rao
S/o Anjaneyulu,
R/o H.No.3-5-303/1/A,
Pillichinnakrishna Thota,
Khammam ….. Petitioner

AND

1. The Chief General Manager,
Telecommunications, BSNL,
Abids, Hyderabad.

2. The Assistant General Manager (Admn.)
O/o CGMT, A.P. Circle,
Hyderabad – 1. ….Respondents

Appearances:

For the Petitioner : M/s. M.V. Hanumantha Rao, Advocates
For the Respondent: Sri S. Prabhakar Reddy, Advocate

AWARD

Sri Vepachedu Rameswara Rao, who worked as Mazdoor (who will be referred to as the workman) has filed this petition under Sec. 2A(2) of the Industrial Disputes Act, 1947 against the Respondents, Railway Electrification Project (REF), BSNL, Secunderabad seeking for declaring the proceeding No. TA/STB/20-2/REP/06-10/42 dated 8.6.2010 issued by the Respondent as illegal, arbitrary, discriminatory, violative of principles of natural justice and to set aside the same consequently directing the Respondents to regularize or re-engage the Petitioner into service duly granting all the consequential benefits and such other reliefs as this court may deems fit.

2. **The averments made in the petition in brief are as follows**:

It is submitted that the Petitioner has worked as Mazdoor in Railway Electrification Project(REF) Secunderabad to Nagpur from 1.1.1994 to 30.9.1996 for 1004 days along with others. The Petitioner submitted that thereafter he along with others continued on voucher payment basis for some time and thereafter on contract basis. Petitioner along with others have been requesting for regularization or to provide regular work still no action has been taken by the department, though they have worked for a considerable period. Further, petitioner came to know that by proceedings dated 21.11.2000 similarly situated 79 persons have been regularized by giving them "temporary status" by the respondent, in fact those persons are juniors to the petitioner and other similarly situated persons. Petitioner hails from poor family and have been pursuing the authorities since long time with a hope that the department would consider her claim in a positive manner. Petitioner submits that, as there was no action taken by the respondents he along with others approached Hon'ble Central Administrative Tribunal, Hyderabad Bench, at Hyderabad by filing OA. Nos. 100/10 and 101/10 and the Hon'ble Tribunal after hearing both the parties disposed of the OAs, on 10.2.2010 with specific directions "since the applicants in the OA also have similar claims as the applicants in the WP.No.12872/08, I consider it appropriate to dispose of this Original Application by giving a direction to the applicants to file individual representations to the respondents giving full details namely, their addresses, places at which they were engaged, the period for which they were engaged etc., within a period of 4 weeks and on receipt of such representations, the respondents shall examine their applications with reference to the records and the scheme that was in force and pass orders within a period of 3 months from the date of receipt of such representation." It is submitted that, as per the orders of the Hon'ble Tribunal the petitioner and others have submitted elaborate representations to the Respondent No.1 along with order passed by Hon'ble Tribunal and also attendance book etc. on 3.3.2010 the Respondent No.1 instead of appreciating the circumstances and without proper verification of records and without providing opportunity of being heard, Respondent has issued the impugned letter dt.8.6.2010 stating,

> " i) With reference to the representation, pursuant to the directions of the Hon'ble Tribunal dated 10.2.2010 in OA. No.100/10 it is informed that the same has been duly considered having regard to the policy and availability of records and it is regretted that it is not open to re-engage you as casual labours or grant of temporary status under the scheme dt.7.10.1989 which has exclusive application to casual labour who have engaged prior to 31.10.1985 up to 22.6.1988 and continued as such. The following have duly taken into consideration for the aforesaid decision. All the casual labors who were eligible as per letter dt.29.9.2000 of DOT were regularized as one time measure.
>
> (ii) Records pertaining to Railway electrification Project are not available for due verification of information furnished by you as they were weeded out as per the retention schedule. The letter of appointment and payment thereof is requisite record to verify your engagement from 1.1.1994 to 30.9.1996

and the basis for the same while DOT, New Delhi letter No.270-6/84-STN dt.22.6.1988 imposed ban on engagement of casual labours including project circle.

(iii) The certification by the Divisional Engineer about such engagement is not acceptable in the absence of records as indicated above.

(iv) It is stated that you have been disengaged as casual labour and also thereafter continued with contractor and thus there is no employer-employee relationship at any point of time thereafter and as such there is no scope to re-engage you as casual labour and also in view of the complete ban as per DOT, New Delhi letter no.269-4/93 STN-II dt. 12.2.1999 and further affirmed vide letter no.269-4/93/STN Il dt.15.6.1999 and the said policy is continuing.

v) The violation of provisions of Sec.25F of ID Act, 1947 having questioned in the appropriate forum at any time and as such disengagement has become final for all purposes.

vi) This disposes of your representation and it is hereby clarified that no further correspondence will be entertained on this subject."

Petitioner submitted that the proceedings dated 8.6.2010 are ex.facie illegal, arbitrary, discriminatory and contrary to record and violative of principles of natural justice and violative of Art. 14 and 16 of Constitution of India. It is submitted when similarly situated persons were regularized the respondent ought to have extended the same benefit to the petitioner also. Further, the reasoning recorded by the respondent as mentioned in the clause-(i) of the impugned order stating that benefit of extension of temporary status under scheme dated 7.10.1989 is only for casual labours who have engaged prior to 31.10.1985 up to 22.6.1988 is not tenable and when the department had extended similar benefit to similarly situated persons and having extracted work from the petitioner during subsequent period, denial of said benefit amounts discrimination. The contention of the respondents as mentioned in clause-(ii), records pertaining to Railway Electrification Project are not available as have weeded out as per the retention schedule is also not tenable. It is submitted non-availability of the records in the department cannot be attributed to the petitioner and respondent ought to have accepted the records produced by the petitioner. It is submitted regarding para no (4) of the impugned order that when similarly situated persons were engaged and records shows the services rendered by the petitioner the contention that there is no relationship as employer and employee is also not tenable. Clause (5) of the order is not maintainable in respect of the claims of petitioner as he has been pursuing with the department to re-engage him in the respondent department in view of their past experience. The petitioner is having record and also the department had considered similarly situated persons as such the petitioner is entitled for relief. It is submitted that the impugned order is not only illegal but also contrary to earlier directions issued by the Hon'ble Central Administrative Tribunal as such as a last resort the petitioner is approaching this Hon'ble court. The petitioner, along with others approached Hon'ble Central Administrative Tribunal Hyderabad Bench at Hyderabad and filed OA. No. 1229/2010 and after hearing both the sides the Hon'ble Tribunal has directed the applicants therein to approach concerned Labour court under Industrial Dispute Act, 1947 and hence, this petition. It is submitted the petitioner and others have filed their concerned days book duly signed by the employer on every month ending, identity card, etc., the days book clearly postulates all the relevant information of the petitioner with regard to work i.e. MRPTS work, cable work, or alignment, store work, etc., and Petitioner was paid Rs.60/- per day. It is therefore prayed that this Hon'ble Tribunal may be pleased to i) Declare the impugned letter No.TA/STB/20-2/REP/06-10/42 dated 8.6.2010 issued by the respondent as illegal arbitrary, discriminatory and violative of principles of natural justice and consequently set aside the said letter.

3. **The Respondents filed counter denying the averments made in the petition, with the averments in brief which runs as follows**:

The Respondent submitted that the claim petition is misconceived and is barred by limitation. There is no engagement of casual labour in BSNL, after 1.10.2000 and the casual labour who have been engaged as such before the imposition of ban vide letter No.270/6/84-STN, New Delhi dated 30.3.1985 and letter No.270-6/84-STN dated 22.6.1988 for the project circles and the line dismantling in the Electrification project circles have been continued in BSNL as a matter of policy and the Petitioner having been engaged in the project after the imposition of ban vide letter dated 22.6.1988 is not covered by the policy thereof and it is not open for the Petitioner to assert for reengagement or regularization under the said policy. The claimant is confusing the Hon'ble Tribunal with regard to the letter No.TA/STB/20-2/REP/06-10/22 dated 27.4.2010 pursuant to the directions of the Hon'ble Central Administrative Tribunal dated 10.2.2010, in OA No.100/2010 filed in continuation of WP No.12872/2008 in the High Court seeking for the identical relief and the communication dated 27.4.2010 based on the directions dt.10.2.2010 in O.A.No.100/2010 to comply with a judicial order notwithstanding the fact that the said O.A.No.100/2010 is misconceived and not maintainable having regard to

the definition of employee in Rule 3(8) of BSNL & CDA Rules, 2006 implemented as such from 10.1.2006 thereby leaving no scope to exercise any jurisdiction by the Hon'ble Tribunal and on 28.2.2011 in O.A.No.1229/2010. It is not open for the claimant to assail the same before this Hon'ble Court in any manner for any purpose. The Railway Electrification project for line dismantling is distinct and different and the said project is out side jurisdiction of the respondent thereby leaving no scope to reengage any casual labour engaged by the said projects organization after the imposition of the ban and disengaging thereafter and entrustment of the work to a contractor thereby leaving no scope for reengagement and regularization as per the settled law. The Petitioner is relying on the documents which do not form part of the record of the respondent without any letters of engagement and payment particulars while the maintenance of the records in not the administrative concern of the answering respondent and no records as such are maintained after the expiry of three years relating to muster roll as per the retention schedule. It is therefore prayed that this Hon'ble Tribunal may be pleased to dismiss the claim petition.

4. Petitioner filed chief examination affidavit and examined himself as WW1 reiterating the facts stated in claim petition stated that, he has worked as Mazdoor (casual labour) in Railway Electrification Project (REF) Secunderabad to Nagpur from 1.1.1994 to 30.9.19996 for 1004 days along with others. Thereafter, he, along with others continued on voucher payment basis for some time and thereafter on contract basis requesting for regularization and no action has been taken by the department, though they have worked for a considerable period.

5. Respondent did not adduce any evidence on their behalf. Both parties filed written arguments as well as submitted oral arguments.

6. Heard. Perused the pleadings of both the parties.

7. **The following points arise for consideration**:-

I. Whether the Petitioner is eligible to be regularized as temporary status with Respondent employment under the scheme Casual Labourers (Grant of Temporary Status and Regularization) Scheme 1989?

II. Whether order dated 8.6.2010 passed by Respondent on Petitioner's representation is just?

III. To what relief if any, the Petitioner is entitled?

Finding:

8. **Points No.I & II**: Before proceeding to determination on points, it would be relevant to narrate the facts in the back drop of the matter. As pleaded by Petitioner workman Sri V. Rammeshwara Rao, he has worked as mazdoor (casual labour) in Railway Electrification Project, Secunderabad to Nagpur from 1.1.1994 to 30.9.1996 for 1004 days along with others. The Petitioner along with others continued on voucher payment basis for some time and thereafter on contract basis. He along with others have been requesting for regularization and to provide the regular work. Still no action has been taken by the Department, though they have worked for a considerable period. It is also pleaded that Petitioner came to know that by proceedings dated 21.11.2000 similarly situated 79 persons have been regularized by giving them temporary status by the Respondents. Since no action was taken by the Respondents he along with others approached Hon'ble Central Administrative Tribunal, Hyderabad Bench at Hyderabad by filing OA No.100/10 and 101/10 and the Hon'ble Tribunal after hearing both the parties disposed of the OAs, on 10.2.2010 with specific direction which reads as follows: "since the applicants in the OA also have similar claims as the applicants in the WP No.12872/08, I consider it appropriate to dispose of this OA by giving a direction to the applicants to file individual representations to the respondents giving full details namely, their addresses, places at which they were engaged, the period for which they were engaged etc., within a period of 4 weeks and on receipt of such representations, the respondents shall examine their applications with reference to the records and the scheme that was in force and pass orders within a period of 3 months from the date of receipt of such representation." The Petitioner in compliance of the above order moved representation dated 3.3.2010 to the Respondent authority and Respondent rejected the representation by passing impugned order dated 8.6.2010. Against this impugned order present industrial dispute petition has been filed by the workman before the Tribunal. It is also submitted that the Petitioner along with others have challenged impugned order dated 8.6.2010 rejecting the representation of Petitioner and filed OA No.1229/2010 and after hearing both the sides Hon'ble Tribunal has directed the applicant to approach the labour court under I.D. Act, 1947. The copy of the order dated 28.2.2011 passed in OA No.1229/2010, G. Pentaiah and others Vs. Union of India has been filed wherein Hon'ble Tribunal has observed as below:

"8. Admittedly, the applicants were engaged between 1.1.1994 and 30.9.1996 and they do not come under the scope of the scheme. However, a direction was given by this Tribunal earlier to examine their cases since the applicants claimed that some juniors who were appointed subsequently had been regularized. I now find that the Respondents have rejected the claim on the ground that relevant records have been weeded out. the matter raised disputed questions of fact viz., whether the applicants were employed as casual labourers for more than 1000 days and whether they are eligible for temporary status, etc. In the absence of records, it is not possible for this Tribunal to adjudicate this matter.

9. I, therefore, dispose of this application with a direction to the applicants to approach the labour authorities under the Industrial Disptues Act, 1947, if they are so advised, with all the relevant material so that a decision on their eligibility for temporary status or otherwise can be taken by the Respondent authorities. The Learned Counsel for the applicants has no objection to such a direction being given."

Therefore, in view of the above direction of Hon'ble Central Administrative Tribunal, we proceed to decide to determine the question whether the applicant was engaged as casual mazdoor for more than 1000 days and they are eligible for temporary status.

9. In this regard, the Petitioner has pleaded that he has got engaged as mazdoor(casual labour) in Railway Electrification Project, Secunderabad to Nagpur form 1.1.1994 to 30.9.1996 for 1004 days along with others. It is also submitted that he along with others continued as such on voucher payment basis and later on contract basis.

10. On the other hand the Respondent has filed counter stating therein that there is no engagement of casual labour in BSNL after 10.10.2000 and the casual labour who have been engaged as such before the imposition of ban vide letter No.270/6/84-STN, New Delhi dated 30.3.1985 and letter No.270-6/84-STN dated 22.6.1988 for the project circles and the line dismantling in the Electrification project circles have been continued in BSNL as a matter of policy and the Petitioner having been engaged in Railway Electrification Project after the imposition of ban in project circles vide letter dated 22.6.1988 is not covered by the policy thereof and it is not open for the Petitioner to assert for reengagement or regularization under the said policy. It is submitted that the Petitioner is not covered under the definition of employee with Rule 3 sub clause 8 of BSNL & CDA Rules, 2006. Therefore, it is not open for the claimant to assail the same in any manner for any purpose. It is also submitted that Railway Electrification Project for line dismantling is distinct and different and the said projects is out side jurisdiction of the answering Respondent thereby leaving no scope to reengage any casual labour engaged by the said projects organization after the imposition of the ban and disengaging thereafter and entrustment of the work to a contractor thereby leaving no scope for reengagement and regularization as per the settled law. It is clear from pleadings of the parties that the Petitioner had worked as a mazdoor in Railway Electrification Project of the Respondent on contract basis. The Petitioner has submitted the documents in support of his allegation which are: Ex.W1 is photocopy of order dated 8.6.2010 which the Respondent authority has rejected the representation of the Petitioner by assigning reasons therein. Ex.W2 is a copy of representation dated 3.3.2010. The last para of the representation reveals that Petitioner has prayed for relief from Respondent to provide him employment, whereas in petition he has sought relief of regularization in the Respondent employment. Document Ex.W3 and W4 are photocopies of the orders of Hon'ble Central Administrative Tribunal passed in OA 1229/2010 and 100/2010. Other document Ex.W5 is photocopy of order passed in OA No.101/2010 dated 10.2.2010. The documents Ex.W6 to W9 are photocopies of the proceedings which were supplied by the Respondent to the Petitioner which contains list of casual labour. Ex.W10 is photocopy of letter regarding temporary status and Ex.W11 is the attendance sheets of the workman Petitioner which has been signed by Divisional Engineer, Telecom, Secunderabad which reveals that the Petitioner has worked as mazdoor from 1.1.1994 to 30.9.1996 in Railway Electrification Project.

11. **It would be relevant to reproduce the provision of Sec.2(oo)(bb) of I.D. Act, 1947 which provide that,**

" (oo) "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include:-

(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; "

12. **The Hon'ble Apex Court in the case of S.M. Nilajkar and ors. Vs. Telecom, District Manager has held:** " the termination of the service of workman engaged in a scheme or project amounts to retrenchment within the meaning of sub-clause (bb) subject to the following provision being satisfied:

i) That the workman was employed in a project or scheme of temporary duration;

ii) The employment was on contract and not as a daily wager simplicitor, which provided inter alia that the employment shall come to an end on the expiry of the scheme or project; and

iii) The employment came to an end simultaneously with the termination of the scheme or project and consistently with the terms of the contract.

iv) The workman ought to have been apprised or made aware of the above said terms by the employer at the commencement of employment.

13. Since the Petitioner has alleged that he has worked as mazdoor from 1.1.1994 to 30.9.1996 in the Railway Electrification Project as contract labour. It goes to show that Petitioner has worked in the Respondent employment on a project which is open for a limited time and after completion of the project the Petitioner cannot claim any employment or regularization in the service of the Respondent. As far as the contention of the Petitioner is concerned that he should be regularized as other casual workers regularized under the scheme, it is settled law that any contract workman has no right to seek regularization of employment from employer, since it is a matter of discretion of the employer. Even otherwise, if a fresh contract contemplated to secure employee appointment with higher qualification or seek a fresh job on contractual employment having more skills, the employer will always have an authority to decide what is best for improving its functioning and which can be depend on work requirements.

14. Petitioner contended that Respondent has mentioned that in the impugned order the record pertaining to Railway Electrification Project are not available for due verification of the information furnished by the Petitioner. As they have weeded out as per retention schedule. The letter of appointment and payment thereof is requisite record to verify the engagement from 1.1.1994 to 30.9.1996. It is the duty of the authority to protect official files and record, it would be worthy to mention here that Petitioner had worked as Mazdoor in Respondent project for the period 1994-1996 as contract labour and he raised present industrial dispute by filing the petition u/s 2A(2) of the I.D. Act, 1947 in July, 2012. Long span of time more than 15 years have elapsed. Respondent in his counter has stated that no record as such are maintained after the expiry of three years relating to the muster roll as per the retention schedule. Since there was gross latches of inordinate delay on the part of Petitioner in raising present industrial dispute. Respondent is not supposed to maintain record of contractual labour beyond retention schedule. Therefore, in the case of non-production of the record by the Respondent, no adverse inference can be drawn against him in this case.

15. Respondent submitted that there is no engagement of casual labour in BSNL after 1.10.2000 and the casual labour who have been engaged before the imposition of the ban vide letter No.270/6/84-STN dated 30.3.1985 and letter No.270-6/84-STN dated 22.6.1988 for the project circles and the line dismantling in the Electrification project circles have been continued in BSNL as a matter of policy and the Petitioner having been engaged in Railway Electrification Project after the imposition of ban in project circles vide letter dated 22.6.1988 is not covered by the policy thereof and it is not open for the Petitioner to assert for reengagement or for regularization under the said policy. The Respondent has submitted the copy of letter No.270/6/84-STN dated 30.3.1985 wherein it is mentioned that the Telecom Department has directed to stop the recruitment or employment of casual labour of any kind, any type of work. Further, copy of letter No.270-6/84-STN dated 22.6.1988 which is regarding casual labour recruitment wherein it is mentioned (para 2) that, there shall be no recruitment of casual labour even for specific period and it was directed to Respondent Department to engage from neighbouring divisions, employed for the project or electrification work. Further, the copy of the letter of DG Telecom, New Delhi dated 7.11.1989 has been filed wherein it is mentioned that the casual labourers could be engaged after 30.3.1985 in projects and Electrification Circles only for specific works and on completion of the work the casual labourers so engaged were required to be retrenched. It is also mentioned that as per the direction in letter dated 22.6.1988 fresh recruitment of casual labourers even for specific works for specific periods in Projects and Electrification Circles also should not be resorted to. Therefore, in view of the ban on engagement of casual labourers the claim of the Petitioner is not maintainable. Since the Petitioner was engaged through contractor in the Railway Electrification Project which was meant for a specific period and after completion of the project work his employment is terminated and he is not eligible to claim for regularization in view of above letters and his status as contract labour.

16. Now the question arises whether there existed employee and employer relationship between the claimant and Respondent. Petitioner has admitted the fact that he was doing the work as a contract labourer in the Respondent Department. Further, to prove the employment there has to be a strict evidence to show some nexus between the claimant and the Respondent. This can be any kind such as appointment letter, monthly payment slip, deduction of Provident Fund, payment of any dues, which can show that he was in the employment of the Respondent. **In the case of Automobile Association of Upper India vs. Presiding**

Officer Labour Court-II, 2006 LLR page 851 wherein the Hon'ble Delhi High Court held, " Engagement and appointment in service can be established directly by the existence and production of appointment letter, a written agreement or by circumstantial evidence of incidental and ancillary records which would be in the nature of attendance register, salary registers, leave records, deposit of Provident Fund contribution and employees state insurance contribution etc.. The same can be produced and proved by the workers or he can call upon and caused the same to be produced and proved by calling for witnesses who are required to produce and prove these records."

17. But in the present case the claimant Petitioner has not produced any single piece of evidence showing that he was issued appointment letter by the Respondent. In fact, he has not disclosed date of actual joining of the employment as casual labour of the Respondent. Therefore, the contention of the Petitioner that he was casual labourer is not found to be proved by his evidence. Hence, he was not covered under Regularization Scheme rather he was contract labour as he has admitted in petition.

Thus, Points No.I & II are answered accordingly.

18. **Point No.III**: In view of the above discussion, it is clear that the Petitioner was not a casual labourer, rather had worked as contract labour for the period from 1994 to 1996. Therefore, Petitioner is not eligible to be regularized as a casual labour in the Respondent employment. The impugned order dated 8.6.2010 passed by Respondent needs no interference and petition is liable to be dismissed. In view of the finding given in Points No.I & II, the Petitioner is not entitled to any relief as prayed for regularization or reengagement. However, the Respondent has submitted that this Tribunal has disposed of LC No. 8/2012 vide its order dated 29.2.2020 and granted relief of compensation to the Petitioner. Therefore, in view of the above, Petitioner is liable for getting the compensation of Rs.50,000/.

Thus, Point No.III is answered accordingly.

ORDER

In view of the findings given above, it is hereby ordered: The petition of the Petitioner is allowed in part. The Respondents are directed to pay a sum of Rs.50000/- (Fifty thousand rupees) to the Petitioner towards compensation within four months from the receipt of this order, failing which the Petitioner is at liberty to take appropriate steps according to Law.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 3rd day of March, 2023.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri Vepachedu Rameshwar Rao	MW1: Nil

Documents marked for the Petitioner

Ex.W1: Photostat copy of the Order dt 27-4-2010

Ex.W2: Photostat copy of the Representation of WW1 dt.3.3.2010

Ex.W3: Photostat copy of order passed in OA. No. 1229/2011

Ex.W4: Photostat copy of order passed in OA. No. 100/2010

Ex.W5: Photostat copy of order passed in CA. No. 101/2010

Ex.W6: Photostat copy of proceeding of respondent dt 9-5-2007

Ex.W7: Photostat copy of proceeding of Director, BSNL Railway Electrification Project Secunderabad dt. 12-9-2002

Ex.W8: Photostat copy of list of candidates issued by Div. Engineer, Secunderabad dt. 11-9-2002

Ex.W9: Photostat copy of proceeding Dt. 13-11-2007 providing information under RTI Act

Ex.W10: Photostat copy of letter dt.21-11-2000 with regard to temporary status

Ex.W11: Photostat copy of Days Book signed by authority

Ex.W12: Photostat copy of Identity card of petitioner

Ex.W13: Copy of order passed in WP No.12872/08

Documents marked for the Respondent

NIL

नई दिल्ली, 10 मई, 2023

का.आ. 782.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स परमाणु ईंधन परिसर, ईसीआईएल पोस्ट, हैदराबाद, के प्रबंधतंत्र के संबद्ध नियोजकों और श्रीमती के. ललिता, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-हैदराबाद के पंचाट (संदर्भ सं. 61/2008) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 10.05.2023 को प्राप्त हुआ था।

[सं. एल- 42025-07-2023-91-आईआर(डीयू)]

डी. के. हिमांशु,अवर सचिव

New Delhi, the 10th May, 2023

S.O. 782.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 61/2008) of the Central Government Industrial Tribunal cum Labour Court – Hyderabad as shown in the Annexure, in the Industrial dispute between the employers in relation to M/s. Nuclear Fuel Complex, ECIL Post, Hyderabad, and Smt. K. Lalitha, Worker, which was received along with soft copy of the award by the Central Government on 10.05.2023.

[No. L- 42025-07-2023-91-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL -CUM -LABOUR COURT AT HYDERABAD

Present: - Sri IRFAN QAMAR, Presiding Officer

Dated the 7th day of March, 2023

INDUSTRIAL DISPUTE L.C.No. 61/2008

Between:

Smt. K. Lalitha,
W/o Sri K. Ashok Raj,
R/o 11-3-1136, Gokul Nagar,
Vinay Colony (Post),
Hyderabad. ... .Petitioner

AND

M/s. Nuclear Fuel Complex,
ECIL Post,
Hyderabad. ....Respondent

Appearances:

For the Petitioner : M/s. A.K.Jayaprkash Rao, P.Sudha, M. Govind & Venkatesh Dixit, Advocates
For the Respondent: Sri Ravinder Viswanath, Advocate

AWARD

Smt K. Lalitha, who worked as Helper (who will be referred to as the workman) has filed this petition under Sec. 2A(2) of the Industrial Disputes Act, 1947 against the Respondent Nuclear Fuel Complex seeking for reinstatement into service duly granting all the consequential benefits such as continuity of service, back wages and all other attendant benefits etc., and such other reliefs as this court may deems fit.

2. **The averments made by the Petitioner in the claim petition are as follows**:

The Petitioner Smt. K. Lalitha has joined the service of the Respondent on 17.12.1999 as a helper and continuously worked unblemishedly till she was illegally removed by the Respondent vide order dated 2.4.2008. She preferred an appeal to the Chief Administrative Officer (Adm.) on 18.4.2008 and subsequently she gave the reminder on 17.6.2008, but in vain. While she is in service, Respondent issued a memorandum dated 25.10.2007 with a set of charges alleging therein that she has committed misconduct. Petitioner submitted her explanation to the charges as per the advise given by the Respondent that if she accept the charges a minor punishment will be imposed, but after receipt of her explanation as per their advise, Respondent ordered for enquiry. Even in the enquiry also she was assured by Respondent that if she accepts the charges in the enquiry she will be given minor punishment. Then, she accepted the charges in the enquiry. It is submitted that before the Enquiry Officer the Petitioner gave a statement that, she is accepting the charges because the Respondent advised and assured that they will if she accept the charges they will give minor punishment, but the Enquiry Officer failed to record the statement. It is further submitted that a stage managed enquiry was conducted, wherein no document was placed before the Enquiry Officer by the Respondent and Enquiry Officer also has not marked any document during enquiry. It is submitted that on the basis of acceptance by the Petitioner only the Enquiry Officer held charges proved against the Petitioner. Therefore, the findings of the Enquiry Officer are perverse, one sided without any supporting documents and against the principles of natural justice. It is submitted that the Petitioner has not committed any misconduct as alleged by the Respondent. Capital punishment of removal inflicted by the Respondent is shockingly disproportionate and does not commensurate with the gravity of misconduct alleged to have been proved against the Petitioner. Petitioner is the only earning member of her family having large number of members depending on the income of the Petitioner and there is no other source of income. Therefore, it is prayed to set aside the order of removal dated 2.4.2008 passed by the Respondent by granting the relief of reinstatement with continuity of service, attendant benefits with back wages etc..

3. **The Respondent filed counter denying all the allegations averred in the claim petition as follows**:

It is submitted that the Petitioner joined Respondent organization as Helper/A(Cos.) on 17.12.1999. She was issued with a charge memo dated 25.10.20017 for submission of false Transfer Certificate and suppressing the factual information. It is submitted that she has admitted the charges vide her letter dated 22.11.2007 brining out her domestic problems for consideration of the Disciplinary Authority. Though she accepted the charges, Disciplinary Authority felt that she should be given an opportunity to heard in person to appraise the charges. Accordingly, Enquiry Officer and Presenting Officer were appointed. The Petitioner was removed from service vide order dated 02.04.2008 by following the prescribed procedure and giving her reasonable opportunity to defend her case. Her appeal dated 22.04.2008 against the penalty order dated 02.04.2008 has been disposed of by the Appellate Authority vide order No.NFC/Vig./1(01/5794/2008/1413 dated 19.08.2008. It is further submitted that during the inquiry proceedings, the charges leveled against her have been read and translated in Telugu to appraise her about the charges. Thereafter, she has submitted a letter dated 08.01.2008 admitting the charges to the Inquiry Officer. Her allegation that an advice was given to her to accept the charges assuring a minor penalty to be imposed on her is not sustainable. It is submitted that the certificate submitted by the Petitioner has been verified by Dy Educational Officer and confirmed that SPVM School, Chandanwadi is a defunct school from the year 1994. The certificate dated 24.04.99 submitted by the Petitioner is not genuine. Moreover, she has altered the date of births of her children to suit her date of birth, which has been established from the documents submitted by her. The Petitioner has submitted false documents with ulterior motive to secure employment in the respondents organization. She has committed grave misconduct as the certificates submitted by her are not genuine as clarified by the Educational Authorities of State Government and established by the inquiry documents on record by the Inquiry Officer during the proceedings. In accordance with Govt. of India Decision No.2 under Rule 11 of CCS (CCA) Rules, 1965, if any Government Servant at the time of initial recruitment in service had furnished false information or produced false certificate in order to secure appointment, he/she should not be retained in service, if the charges are proved, the Government Servant should be removed/ dismissed from service. In no circumstances, should any

other penalty be imposed. On establishing the facts that the Petitioner submitted false educational qualifications with an ulterior motive to secure employment in the respondents' organization, penalty of removal from service was imposed by the Disciplinary Authority after giving reasonable opportunity to the Petitioner. Therefore, Petitioner is not entitled for any relief.

4. As enquiry was not challenged by Petitioner, domestic enquiry is hled to be legal and valid vide order dated 21.9.2011.

5. Petitioner did not turn up for arguments. Respondent filed written arguments and submitted oral arguments as well.

6. It is submitted by the counsel for the Respondent that the petitioner was removed from service vide order dated 2.4.2008 by following the prescribed procedure and giving her opportunity to defend her case. The Petitioner submitted her representation dated nil, received in administration on 22.4.2008 against the penalty order which has been disposed of by Appellate Authority by order No.NFC/Vig./1(01)/56794/2008/1413 dated 19.8.2008. The order of the Appellate Authority was acknowledged by her. It is submitted that during inquiry proceedings, the charges levelled against her about the charges were explained to her. Thereafter, she has submitted a letter dated 08-01-2O06 admitting the charges to the Inquiry Officer. Her allegation that an advice was given to her to accept the charges assuring a minor penalty to be imposed on her, is not true and is not sustainable in law and liable to be quashed as the prime duty of Inquiry Officer is to conduct the inquiry proceedings impartially and submit his report to Disciplinary Authority for taking a decision. Under any circumstances Inquiry Officer or Disciplinary Authority will not assure about the penalty to be imposed on the Charged Official. It is submitted that the certificate submitted by the petitioner has been verified by Dy. Educational Officer and confirmed that SPVM School, Chandanwadi is a defunct school from the year 1994. The certificate dated 24-04-1999 submitted by the petitioner is not genuine. Moreover, she has altered the date of births of her children, which has been established from the documents submitted by her. The petitioner has submitted false documents with ulterior motive to secure employment in the Respondent's organization. She committed a grave misconduct. It is submitted that the allegations made by the petitioner that she has not committed any misconduct or suppressed the facts willfully and the certificates submitted by her is borne by the record, is not correct as the certificates submitted by her are not genuine as clarified by the Educational Authorities of State Government and established by the documents on record by the Inquiry Officer during the Inquiry proceedings. It is submitted that in accordance with Govt. of India Decision No.2 under Rule 11 of CCS (CCA) Rules, 1965, if any Government Servant at time of initial recruitment in service had furnished false information or produced false certificate in order to secure appointment, he/she should not be retained in service, if the be charges are proved, the Government Servant should be removed/dismissed from service. In no circumstances, should any other penalty be imposed. On establishing the facts that the petitioner submitted false educational qualifications with an ulterior motive to secure employment in the Respondent's organization, penalty of removal from service was imposed by the Disciplinary Authority after giving reasonable opportunity to the petitioner. It is submitted that Petitioner has not approached the Tribunal with clean hands and she has is not entitled to any relief and the petition be dismissed with exemplary costs.

7. **On the basis of rival pleadings of the parties following points emerges for determination**:

I. Whether action of Respondent in terminating the services of Petitioner Smt. K. Lalitha vide order dated 2.4.2008 is justified?

II. Whether the punishment of dismissal inflicted upon the Petitioner is disproportionate and not commensurate to the charge levelled against her?

III. To what relief is any Petitioner is entitled?

Finding:

8. **Points No.I & II**:Petitioner claims that she joined the services of Respondent on 17.12.1999 as a helper and continuously worked unblemishly till she was illegally removed by the Respondent by order dated 2.4.2008. Respondent issued memorandum with a set of charges alleging therein she has committed misconduct. On the advice and assurance of Respondent that she will be awarded minor punishment, she has admitted charge but the Respondent inflicted punishment of removal from service to her. Petitioner pleaded in her claim statement that the Respondent has conducted a stage managed enquiry against the Petitioner and no evidence either documentary or oral to substantiate the charge levelled against her was placed before the Enquiry Officer. It is also pleaded that Enquiry Officer failed to consider the reasons behind accepting the charge by Petitioner. The Enquiry Officer without any documents on record gave the finding as charge proved on the basis of admission made by the Petitioner. The findings of the Enquiry Officer are perverse, one sided without any document and against the principles of natural justice. It is also submitted by the Petitioner

counsel that during the enquiry it was assured by the Respondent that if she has accepted the charge in the enquiry she will be given minor punishment and the Petitioner as per advice and assurance, accepted the charge in the enquiry.

9. On the other hand, Respondent has denied the allegation made by the Petitioner and submitted that her allegation that advice was given to her assuring minor penalty to be imposed on her is not true and is not sustainable in law. The Enquiry Officer has conducted enquiry impartially and submitted reasoned report to the Disciplinary Authority. Under any circumstances, Enquiry Officer or Disciplinary Authority will not assure about the penalty to be imposed on the charged official.

10. Perused the record. The Petitioner has not adduced any evidence to fortify her claim as alleged in the petition that any kind of assurance of minor punishment was given to her or by whom it was given to her. Whereas the Respondent has submitted the documentary evidence along with the counter, i.e., annexure-I, it is attested copy of the order dated 19.8.2008, which goes to show that the Appellate Authority has confirmed the penalty of removal of service of Smt. K. Lalitha as imposed by the Disciplinary Authority vide order dated 2.4.2008. Appellate Authority has discussed in detail of the enquiry proceeding and the reasons thereof and also decision of her removal from service. Keeping in view gross misconduct by producing forged educational document i.e., T.C. by Appellant and facts, circumstances of case dismissed her appeal. Annexure-2 is acknowledgement which goes to show that the Petitioner received copy of charge and document during enquiry. Annexure-3 is the report of District Educational Officer, Hyderabad dated 25.5.2005 which was addressed to the Respondent office in reply for the verification of the Transfer Certificate submitted by Smt K. Lalitha. It is mentioned therein that as per report of Dy. Educational Officer, Hyderabad, the Transfer Certificate by H.M., S P V M Chandanwadi School in which the Petitioner said to have studied no records are available in this regard. The report of Dy. Educational Officer is also attached and it is mentioned therein "case verified, the education documents submitted by Petitioner and no record was available regarding her Transfer Certificate as the school was found to be defunct. Another report dated 4.6.2007 is also available which was submitted by Dy. Educational Officer, Nampally, Hyderabad, Assistant Personal officer, NFC to District Education Officer, regarding verification of TC in respect of Smt. K. Lalitha wherein it is clearly mentioned which reads as follows:

"1. In the page at Sl.No.9, the name Lalitha is clearly an entry made at a later date and also in place of some other entry, which is not clear. Against the entry, the Date of Birth, Marks of identification, Date of leaving and date of TC Etc are changed and over written with the present entries.

2. As per the copy of the admission register a candidate with Date of Birth 9.10.1975 at (Sl.No.11) is admitted into LKG on 26.6.1976 i.e., at an age of '8' months.

3. In the admission register at Col.No.24, some students' were issued with TC's bearing a six digit number with date, but this candidate is not given any TC consisting of six digit code, but used some proforma available in the open market.

4. On comparing the TC with the admission register, it creates doubt about the candidate's mother tongue. As per admission register it is Hindi but as per TC it is Telugu.

5. As per the admission register, the candidate's mother tongue is Hindi and her I language is also Hindi and she has studied through English medium upto III class. But in her reply she has stated "Since these certificates and letters are in English, I could not understand them.(originally written in Telugu…..translated to English)" But how could she represent the same in Telugu, while she has not studied in her mother tongue."

11. The contents of said report reflects that, Transfer Certificate was submitted by the Petitioner to the Respondent at the time of appointment was found to be forged, since the record of school could not verify the entries entered in her Transfer Certificate. Annexures 5,6 and 7 are birth certificates of her children alleged to be issued by Municipal Corporation of Hyderabad. Annexure 5 is the birth certificate of K. Shashi Rekha and date of birth entered as 6.11.1989. Another birth certificate of K. Satish Raj, Petitioner's son and his date of birth is entered as 15.8.1990 and annexure 7 is the birth certificate of K. Sravanthi and date of birth entered is 20.6.1991. The date of birth of all three children of Petitioner are contradictory and make it doubtful. The enquiry report dated 9.6.2008 reflects that at every stage of the enquiry proceeding, Petitioner workman was provided hearing opportunity. She attended the enquiry on 8.1.2008 and during the enquiry she has admitted all charges levelled against her and further she has stated that she will not commit such mistake in future, and also requested to pardon her. From the Documents filed by Respondent it appears that Presenting Officer read out the statement of Article of charge to the delinquent Smt. K. Lalitha and explained the same in Telugu in detail. Smt. K. Lalitha confirmed the receipt of the charge memo and accept the charge levelled against her. Therefore, she was given full opportunity to defend but She admitted the charge levelled against her during the

enquiry. The Enquiry Officer after going through the relevant documents i.e., Transfer Certificate verification reports received from Educational Officer, Nampally regarding Transfer Certificate and birth certificate of her children submitted by her and admission of guilt by her, he came to a conclusion that the Petitioner has committed the misconduct under Rule 3(j)(i)(iii) of CS(Conduct) Rules, 1964. Therefore, punishment or removal from service was inflicted upon her.

12. In **Indian Oil Corporation Ltd., Vs. Rajendra D. Harmalkar in Civil Appeal No. 2911/2022 the Hon'ble Apex Court held:** *"In the present case, the original writ petitioner was dismissed from service by the Disciplinary Authority for producing the fabricated/fake/forged SSLC. Producing the false/fake certificate is a grave misconduct. The question is one of a TRUST. How can an employee who has produced a fake and forged mark sheet/certificate, that too, at the initial stage of appointment be trusted by the employer? Whether such a certificate was material or not and/or had any bearing on the employment or not is immaterial. The question is not of having an intention or mens rea. The question is producing the fake/forge certificate. Therefore, in our view, the Disciplinary Authority was justified in imposing the punishment of dismissal from service. It was a case on behalf of the Petitioner – original writ Petitioner before the High Court that he pleaded guilty and admitted that he had submitted a forged and fake certificate on the assurance that lesser punishment will be imposed. However, except the bald statement, there is no further evidence on the same..*

Even from the impugned judgement and order passed by the High Court it does not appear that any specific reasoning was given by the High Court on how the punishment imposed by the Disciplinary Authority could be said to be shockingly disproportionate to the misconduct proved. As per the settled position of law, unless and until it is found that the punishment imposed by the Disciplinary Authority is shockingly disproportionate and/or there is procedural irregularity in conducting the inquiry the High Court would not be justified in interfering with the order of punishment imposed by the Disciplinary Authority which as such is a prerogative of the Disciplinary Authority as observed herein above.

In any case in the facts and circumstances of the case and for the reasons stated above and considering the charge and misconduct of producing the fake and false SSLC certificate proved, when a conscious decision was taken by the Disciplinary Authority to dismiss him from service, the same could not have been interfered with by the High Court in exercise of powers under Article 226 of the Constitution of India."

13. Petitioner contended that Enquiry Officer without any document on record gave the finding of charge proved on the basis of admission made by the Petitioner. Perusal of the enquiry report reveals that Enquiry Officer while giving finding on charge has relied upon the verification report of Dy. Educational Officer, Nampally regarding the Transfer Certificate submitted by Petitioner to obtain the employment and the report contain that the content of said T.C., could not be verified from the record of school. Therefore, Enquiry Officer came to conclusion that T.C. is forged and fake. The contention of the Petitioner is not tenable.

14. It is also submitted that it was assured by the Respondent to her that if she will accept the charge in inquiry she will be given minor punishment and the Petitioner as per advice and assurance, accepted the charge during enquiry. But the Petitioner did not disclose the name of the person in her claim statement or evidence that who was the person that gave her such advice or assurance to admit the guilt in enquiry. No evidence given by the Petitioner to this effect. It appears that when she felt apprehension about the consequences of filing fake/forged certificate, she voluntarily admitted her guilt in relation to charge and also tried to seek lenient view from Respondent or pardon in order to save her employment. There is no such allegation that she was misrepresented or intimidated by Respondent to accept the guilt of charge. Then her allegation that her admission was not voluntary and was under assurance is untenable.

15. Petitioner submitted T.C. dated 24.4.1999 whereas the report of D.E.O., Nampally states that the said school is defunct since the year 1994. Therefore, the said T.C. submitted by Petitioner in any circumstances cannot be said to have been issued by the said school. Further, enquiry report reveals that Transfer Certificate submitted by Petitioner is fake/forged. Another allegation raised by Petitioner is that no oral evidence has been collected by the Enquiry Officer during the enquiry. Since the enquiry pertains to documentary evidence i.e., Transfer Certificate which can be verified only by documentary evidence. The verification report has been collected from competent authority during the enquiry and relied upon by the Enquiry Officer. Moreover, Petitioner did not disclosed in her petition that how she obtained Transfer Certificate and by whom she got it issued. Therefore, in the facts and circumstances of the case, the said document Transfer Certificate is found to be fabricated/forged and fake.

16. The Respondent authority keeping in view of seriousness of misconduct committed by Petitioner has inflicted the punishment of dismissal from service upon her. It is a case of Trust and when the Disciplinary Authority/ employer looses confidence and trust in such an employee who submitted forged/fake certificate, there is no need to interfere in the order of punishment imposed by Disciplinary Authority. In **Coal India Ltd.,**

& Anr., Vs. Mukul Kumar Choudhari & Ors in Civil Appeal Nos.5762-5763 of 2009, wherein the Apex Court held: *"One of the tests to be applied while dealing with the question of quantum of punishment would be : would any reasonable employer have imposed such punishment in like circumstances: Obviously, a reasonable employer is expected to take into consideration measure, magnitude and degree of misconduct and all other relevant circumstances and exclude irrelevant matters before imposing punishment."* In such circumstances, the infliction of punishment by Disciplinary Authority of the removal of the Petitioner Smt. K. Lalitha from services cannot be said to be disproportionate and not commensurate to her misconduct.

Thus, Points No.I & II are answered accordingly.

18. **Point No.III**: In view of the findings given in Points No.I & II and Law laid down by the Apex Court, the Petitioner is not entitled to any relief as prayed for and the Petitioner's claim is liable to be dismissed hence stands dismissed.

Thus, Point No.III is answered accordingly.

ORDER

In these circumstances, this tribunal comes to the conclusion that the order of removal of the Petitioner is legal and justified, she is not entitled for any relief. And also claim petition is unfounded and deserves to be dismissed and stands dismissed.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant, transcribed by her and corrected by me on this the 7th day of March, 2023.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 10 मई, 2023

का.आ. 783.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मुख्य आयुक्त, सीमा शुल्क और केंद्रीय उत्पाद शुल्क, विजाग क्षेत्र, विशाखापत्तनम; आयुक्त, सीमा शुल्क और केंद्रीय उत्पाद शुल्क, तिरुपति आयुक्तालय, तिरुपति; सहायक आयुक्त, सीमा शुल्क और केंद्रीय उत्पाद शुल्क, मंडल कार्यालय, कुरनूल मंडल, कुरनूल; मालिक, मैसर्स श्रीकृष्ण रोजगार सूचना और सेवाएं, एन कुरनूल, के प्रबंधतंत्र के संबद्ध नियोजकों और श्री बी वनमन्ना, श्री पी नागराजू, और श्री पी श्रीनिवासुलु, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-हैदराबाद के पंचाट (संदर्भ सं. 80/2007, 81/2007 & 82/2007) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 10.05.2023 को प्राप्त हुआ था।

[सं. एल- 42025-07-2023-82-आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 10th May, 2023

S.O. 783.— In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 80/2007, 81/2007 & 82/2007) of the Central Government Industrial Tribunal cum Labour Court – Hyderabad as shown in the Annexure, in the Industrial dispute between

the employers in relation to The Chief Commissioner, Custom and Central Excise, Vizag Zone, Visakhapatnam ; The Commissioner, Customs and Central Excise, Tirupathi Commissionerate, Tirupathi ;The Assistant Commissioner, Customs and Central Excise, Divisional Office, Kurnool Division, Kurnool ; proprietor, M/s Sri Krishna Employment Information and services, NKurnool, and Shri B. Vanamanna, Shri P Nagaraju, and Shri P Srinivasulu, Worker, which was received along with soft copy of the award by the Central Government on 10.05.2023.

[No. L-42025-07-2023-82-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT, HYDERABAD

Present: - Shri IRFAN QAMAR, Presiding Officer

Dated the 3rd day of April, 2023

INDUSTRIAL DISPUTES LC No. 80/2007, 81/2007 & 82/2007

Between:

1. LCID 80/2007

B Vanamanna S/o Layanna
Pasupalla Village & Post
Kurnool Mandal, Kurnool – 518004 (A.P)

2. LCID 81/2007

P Nagaraju, S/o P Devanna
H No 40/706, Dharmapeta
Kurnool – 518004 (A.P)

3. LCID 82/2007

P Srinivasulu, S/o P Basavaiah,
C/o Sri Pulla Rao garu, Principal, Ravindra Junior College, Abbas Nagar,
Kurnool. …**Petitioners**

AND

1. The Chief Commissioner, Custom and Central Excise, Vizag Zone, Visakhapatnam
2. The Commissioner, Customs and Central Excise, Tirupathi Commissionerate, 9-86-A, West Church Compound, MR Palle Road, Tirupathi – 517502
3. The Assistant Commissioner, Customs and Central Excise, Divisional Office, Kurnool Division, Near Children's park, NR Peta, Kurnool – 518004
4. M/s Sri Krishna Employment Information and services, No 40-790-2, Nehru Nagar, Kurnool, Rep by its proprietor, Sri BV Ramana. ….Respondents

Appearance in all 3 cases:

For the Petitioners	:	Shri William Burra, Advocate
For the Respondents No.1 to 3	:	Shri K Rama Krishna Reddy, Advocate
For the RespondentNo. 4	:	Shri MVL Narsaiah, Advocate

COMMON AWARD

Petitioner Sri B Vanamanna has filed petition under section 2(A)(2) of the ID Act against the Respondent with a prayer to set aside the oral termination order 31.1.2007 and direct the respondent to reinstate the petitioner with full back wages, continuity of services and all other attendant benefits which has been registered as LCID No.80 of 2007.

2. Petitioner Sri P Nagaraju has filed petition under section 2(A)(2) of the ID Act against the Respondent with a prayer to set aside the oral termination order 31.1.2007 and direct the respondent to reinstate the petitioner with full back wages, continuity of services and all other attendant benefits which has been registered as LCID No.81 of 2007.

3. Petitioner Sri P Srinivasulu has filed petition under section 2(A)(2) of the ID Act against the Respondent with a prayer to set aside the oral termination order 31.1.2007 and direct the respondent to reinstate the petitioner with full back wages, continuity of services and all other attendant benefits which has been registered as LCID No.82 of 2007.

4. In all the above mentioned LCIDs, the petitioners have raised similar Industrial Disputes, therefore all these cases are being heard simultaneously and decided by Common Judgement.

5. In LCID 80/2007, the brief facts given raise to ID are that applicant Sri B Vanamanna was working as casual labour in the office of The Assistant Commissioner, Customs and Central Excise, Divisional Office, Kurnool i.e R3 and he was terminated from service by employer on 01.02.2007. The applicant was drawing a wage of Rs.124/- per day at the time of termination. Further it is submitted that he was engaged as casual labour on 11.11.1998 in the office of Respondent No.3 and nature of duty performed was cleaning, sweeping, gardening and certain errand works to the officers. The petitioner worked as casual labour from 11.11.1998 to 31.1.2007 and thereafter the services of the petitioner were orally terminated. It is submitted that said oral termination is illegal, unjust, against the provisions of ID Act 1947 and also against the principles of natural justice. The Petitioner further submits that the 3rd Respondent has not given any notice of termination as required U/Sec. 25-F of the I.D. Act, 1947. The Petitioner was not paid one month wages in lieu of notice. He was also not paid any retrenchment compensation as required under Sec.25-F of the I.D. Act, 1947 and he has also not been paid gratuity as required under the provisions of payment of Gratuity Act, 1947. It is further submitted that ever since he was pointed as Casual Labour on 11-11-1998 he worked continuously with the 3rd Respondent and thus he worked more than 240 days in each calendar The year. Hence the Petitioner is entitled to be continued in service and termination of petitioner is therefore illegal, unjust, improper and against the Provision of the I.D.Act, 1947 and also against the principles of natural justice.

6. The Petitioner further submits that the Respondents have now engaged the Contract Labour through an Agency i.e. M/s. Sree Krishna Employment Information and Services, Kurnool w.e.f. 01-12-2004. Though the 3rd Respondent engaged the Contract Labour through the above Agency, the Petitioner and others have also rendered their services simultaneously till 31-01-2007. When the Petitioner approached for his salary every month, the stock reply of the Management was that they will pay the salary regularly provided the Petitioner Registers his name with Labour Supply Agency i.e. M/s. Sree Krishna Employment, Information and Services, Kurnool. The Petitioner submits that he being the Casual Labour working with the Department directly, he declined to come through the above contractor. The 3rd Respondent therefore refused to pay the Petitioner's wages from 01.12.2004 to 31.01.2007. The management also failed to pay difference in wages from 01-04-2004 to 30-11-2004. The Petitioner submits that there is enough proof to show that he worked directly with the Department during the above period. The Respondents have categorically admitted that the Petitioner has worked as Casual Labour with the Respondents. Inspite of the clear admission the management failed to pay the wages for the period from 01-12-2O04 to 31-01-2007 and difference of wages from 01.04.2004 to 30.11.2004. The Petitioner has filed an application U/Sec. 33(C)(2) of the I.D.Act, l947 separately, demanding payment of salary from 01.12.2004 to 31.01.2007 and difference in wages from 01-04-2004 to 30-11-2004.

7. The Petitioner further submits that the Petitioner and other affected Casual Labour have filed O.A. No. 1303/2004 before the Hon'ble CAT, Hyderabad for redressal of grievances including oral termination of the services by the 3rd Respondent w.e.f. 01-12-2004. The Hon'ble CAT, Hyderabad was pleased to grant interim stay directing the Respondents to maintain Status-quo and thus Petitioner continued, as Casual Labour. The CAT, Hyderabad had passed final order on 31.03.2005 vacating the interim order etc. The Petitioner submits that as the Judgement dated 31-03-2005 of the Hon'ble CAT, Hyderabad is against the Petitioner and others, the Petitioner and others approached the Hon'ble High Court of AP. Hyderabad under Article 226 of the Constitution of India, by way of Writ Petition. The Writ Petition being numbered as 16637 of 2005 in which the Hon'ble High Court has passed an interim order dt. 01-08-2005 stating “Status quo obtained as on today shall be maintained pending further orders". In pursuance of the above orders the Petitioner and others continued as Casual Labour directly with the department till the WP No. 16637 of 2005 was finally disposed on 03-08-2006,

with certain directions which were received by the 3rd Respondent on 23-10-2006. The Petitioner continued as Casual Labour till 31-01-2007. Therefore, the petitioner prayed to set aside the oral termination dated 31.1.2007 as illegal and sought direction to respondent to reinstate the petitioner with full back wages, continuity of services and all other attendant benefits.

8. In LCID 81 of 2007, the petitioner Sri P Nanaraju submitted that he was appointed as Casual Labour Orally on 15-7-1998 in the office of Asst. Commissioner, Customs and Central Excise, Kurnool Division, Kurnool. The nature of duties performed by the Petitioner are Cleaning, Sweeping, Gardening and certain errand works to the officers. The Petitioner worked as Casual Labour from 15-07-1998 to 31-01-2007 on which date the services of the Petitioner were orally terminated. The said oral termination is illegal, unjust, against the provisions of I.D.Act 1947 and also against the principles of natural justice. He further submits that the 3rd Respondent has not given any notice of termination as required U/Sec. 25-F of the I.D.Act, 1947. The Petitioner was not paid one month wages in lieu of notice. The Petitioner submits that he was also not paid any retrenchment compensation as required under Sec.25-F of the I.D.Act, 1947. The Petitioner has also not been paid gratuity as required under the provisions of payment of Gratuity Act, 1947. It is further submitted that ever since he was pointed as Casual Labour on 15-07-1998 he worked continuously with the 3rd Respondent and thus he worked more than 240 days in each calendar year. Hence the Petitioner is entitled to be continued in service. The Termination is therefore illegal, unjust, improper and against the Provision of the ID.Act, 1947 and also against the principles of natural justice.

Facts of payment of salary from 1-12-2004 to 31-1-2007 and arrears

9. In LCID 82 of 2007, the petitioner Sri P Srinivasulu submitted that he was appointed as Casual Labour orally on 01-11-1999 in the office of Asst. Commissioner, Customs and Central Excise, Kurnool Division, Kurnool. The nature of duties performed by the Petitioner is Cleaning, Sweeping, Gardening and certain errand works to the officers. The Petitioner worked as Casual Labour from 01.11.1999 to 31.01.2007 on which date the services of the Petitioner were orally terminated. The said oral termination is illegal, unjust, against the provisions of I.D. Act 1947 and also against the principles of natural justice. He further submits that the 3rd Respondent has not given any notice of termination as required U/Sec. 25-F of the I.D. Act, 1947. The Petitioner was not paid one month wages in lieu of notice. The Petitioner submits that he was also not paid any retrenchment compensation as required under Sec.25-F of the I.D. Act, 1947. The Petitioner has also not been paid gratuity as required under the provisions of payment of Gratuity Act, 1947. It is further submitted that ever since he was pointed as Casual Labour on 01-11-1999 he worked continuously with the 3rd Respondent and thus he worked more than 240 days in each calendar year. Hence the Petitioner is entitled to be continued in service. The Termination is therefore illegal, unjust, improper and against the Provision of the I.D. Act, 1947 and also against the principles of natural justice.

Facts about salary from 1-12-2004 to 31-1-2007

10. In LCID 80/2007, Respondent No.3 has submitted his counter wherein he has submitted that the petitioner affidavit is not correct. All Paras of the petition affidavit is not correct i.e., M/s. Sri Krishna Employment Information and Services Agency were appointed as Casual Labour in the R3 office. The Respondent No.3 was paid the Petitioner total salary to Agency. All Casual workers were received their salaries to the Agencies except the Petitioner. The Petitioner was demanded salary amount of Rs.87,960/-, it is not correct. The Petitioner has not worked 30 days in every month. He has worked different days excluding Saturdays, Sundays and holidays declared by Government.

11. During the hearing of the case Respondent 4 was impleaded as party and he has submitted his counter wherein he contested that the respondent no,4 engaged 7 employees with respondent no.2 on contract base from 1-12-2004 to 1-02-2007. The contract was closed on 1-02-2007. It is submitted that the respondent No.4 organization was closed in the month of February 2007. Since that day no person was with respondent No.4. The respondent no.4 paid entire wages to workers as per their worked period. The respondent no. 4 denies the allegation of the petitioner that he was not paid his wages from 1-12-2004 to 31-01-2007. The respondent no.4 paid entire wages to the petitioner in the month of February, 2007 itself, i.e., at the time of closer of respondent no.4. It is submitted that the entire wages were paid in the month of February, 2007 itself. It is pertinent to note that there was not even any single allegation or any compliant against respondent No.4 during the employment of the present petitioner. The petitioner never made any complaint against respondent No.4, either to any labour authority or to respondents No.1 to 3 who are his immediate employer, now he cannot take such false and untenable plea that his wages were not paid from 01.12.2004 to 31.01.2007. The Payment of Gratuity doesn't arise as the petitioners were not worked with respondent no.4 for five years.

It is submitted that respondent No.4 organization was closed in the month of February 2007. Since that day no person was with respondent No.4 The question of reinstatement of services of the petitioner doesn't arises and that to with respondents 1 to 3 is not in the control of respondent No.4 and Respondent No.4 is not at all concerned in this matter and he is nothing to do with the present case.

12. In LCID 81 of 2007 and LCID 82/2007, Respondent No.3 and Respondent No.4 have submitted their counter with almost similar contentions and grounds as has been filed by them in LCID 80 of 2007. Therefore at the cost of repetition the grounds and contention of counter filed by Respondents No.3 and 4 in LCID 80 of 2007 these are being read as such in these LCIDs also.

13. In LCID 80 of 2007, in support of the plea taken in petition, the petitioner has filed his affidavit in lieu of chief examination but even after being provided sufficient opportunity, Respondent, he did not cross examination the witness WW1. Apart from oral testimony of WW1, the petitioner has filed documentary evidence which have been marked as Ex. W1 to W10. Respondent has not filed any documentary or oral evidence to rebut the plea of petitioner and his evidence. Similarly, in LCID No.81 of 2007 and 82/2007 petitioners have filed chief affidavit in oral evidence and filed documentary evidence Ex. W1 to W10 and proved the plea taken in petition. Respondent in these LCID also did not produce any oral and documentary evidence to rebut or counter the evidence of the petitioner.

14. Heard the arguments. Both the parties have filed their written arguments in all three LCIDs and more are less similar ground have been raised by the petitioner in all three cases.

15. On the basis of pleadings of claim statement of the petitioner and argument advanced by both the parties, following common points emerging for determination in these matters:-

(a) Whether the action of the Assistant Commissioner, Customs and Central Excise, Kurnool Division in terminating /retrenching services of the petitioners namely, 1) B Vanamanna, 2) P Nagaraju and 3) P Srinivasulu with effect from 31.01.2007 in contravention of provisions of Section 25-F of ID Act, 1947 and denying reinstatement with back wages is legal and justified ?

(b) If not, to what relief of concerned workmen are entitled to ?

(c) Whether petitioners are entitled for arrear of wages for the period from 1-12-2004 to 31-1-2007 ?

FINDING:-

16. **Point No.(a):** In LCID 80 of 2007, petitioner Shri B Vanamanna, in his petition has submitted that he was appointed as casual labour orally on 11.11.1998 in the office of Respondent No.3 and the nature of duties to be performed were cleaning, sweeping, gardening and certain errand works to the officers. The petitioner worked as casual labour from 11.11.1998 to 31.1.2007 on which dated he was orally terminated. He further submitted that Respondent has not given any notice of termination as required under section 25-F of ID Act 1947 and petitioner was not given any wages in lieu of notice or retrenchment compensation. As per section 25-F he was not paid any gratuity. It is further submitted that ever since he was appointed in the office of Respondent No.3, he worked continuously and he worked for more than 240 days in each calendar year and hence, petitioner is entitled for continuous service.

17. Respondent No.3 has filed the counter although he refuted the claim of petitioner in his counter in general statement but there is no specific denial by the respondent that petitioner was not engaged as casual labour by the Respondent from 11.11.1998 to 31..1.2007. Further, Respondent has admitted that the petitioner has worked for 30 days in every month. It is also submitted that he has worked different days excluding Saturdays, Sundays and holidays declared by Government. In fact there is no specific denial by respondent in his counter that petitioner did not work from 11.11.1998 to 31.1.2007 as daily wage workman in his office. Similarly in LCID 81 of 2007 & LCID 82 of 2007, Respondent in his counter has not specifically denied the claim of petitioners that they have worked in Respondent No.3 office as casual labour from 15.7.1998 and 1-11-1999 respectively upto 31.1.2007.

18. Therefore, in the absence of specific denial by Respondent and on the basis of the plea and evidence of petitioner, the fact that petitioner has worked as casual labour from 11.11.1998 upto 31.1.2007 stands proved. Further, petitioner in support of his plea has also submitted documentary evidence. Ex. W1 is the copy of letter dated 23.8.2006 which was addressed to the Administrative officer (Hqrs), Tirupathi Commissionerate, Tirupathi by Administrative officer of Respondent No.3, Kurnool Division therein it is mentioned in reply to the letter the list of casual labour who worked before introduction of outsourcing was sent to the office of concerned. The list annexed with this Ex. W1, at Sl No.5 the name of petitioner Sri B Vanamanna (petitioner in LCID 80 of 2007) is mentioned. At Sl No. 4 the name of Shri P Nagaraju (Petitioner in LCID 81 of 2007) and at Sl No.6 the name of Shri P Srinivasulu (Petitioner in LCID 82 of 2007) are mentioned and in the column

titled as Date of Äppt./working" against their names date is mentioned as 11.11.1998 for Sri B Vanamanna, 15.7.1998 for Sri P Nagaraju and 01.11.1999 for Sri P Sreenivasulu. These documents support the plea taken by the petitioners that they were engaged by respondent as casual labour on 11.11.1998, 15.7.1998 and 1.11.1999 respectively. Further Ex. W2 is a copy of order of Hon'ble High Court of Andhra Pradesh which reveals that the petitioner along with other casual labours had filed WP No. 16637 of 2005 and in that WP they filed WPMP No 21154 of 2005 for direction to the Respondent to continue the petitioners without converting them to contract system. The Hon'ble High Court vide order dated 01.08.2005 was pleased to pass the order: "Status-quo obtaining as on today shall be maintained, pending further orders." Thus it goes to show that the petitioner has worked continuously in Respondent employment as casual labour. Ex. W3 is a correspondence dated 30.11.2005 which is addressed to the Commissioner of Customs and Central Excise, Tirupathi. It is also mentioned therein that petitioners were working on their own and no connection whatsoever with R4 (M/s Sri Krishna Employment & Information Services) or its proprietor. Further, Ex.W4 is a copy of order dated 16.12.2004 passed by Hon'ble CAT, Hyderabad which reveals that petitioner along with other petitioners filed OA No 1303 of 2004. Tribunal has passed interim order of status-quo regarding engagement of petitioners in the employment of respondent employer.

19. Further Ex. W5 is an application filed by petitioner addressed to the Chief Commissioner of Customs and Central Excise, Visakhapatnam Zone for compliance of order passed by Hon'ble CAT, Hyderabad. Ex. W6 is a copy of communication dated 23.11.2006 which was sent by Assistant Commissioner (Legal), Tirupathi to Kurnool Division wherein it was requested for implementation of order of High Court. Ex. W7 is correspondence by Assistant Solicitor General of India dated 2.11.2005 to the Assistant Commissioner of Customs and Central Excise wherein it is requested that in view of the interim order passed by the Hon'ble High Court in WP No.16637 of 2005 to pay the wage as per impugned order of Hon'ble High Court to whoever performed the work on 1.8.2005. Ex. W8 is representation dated 23.11.2005 which was addressed to Assistant Commissioner of Customs and Central Excise i.e Respondent No.3 by the petitioner with the prayer that they are working as a casual labour on their own and have no connection with any contractor/ agency. Ex. W9 is also a correspondence dated 24.11.2005 which was communicated by Assistant Commissioner of Customs and Central Excise addressed to Respondent No.4 regarding the payment of bills/ wages to the casual labour. Document Ex. W10 is a photo copy of correspondence by Shri BV Ramana, Proprietor of R4 addressed to the Assistant Commissioner of Customs and Central Excise, Kurnool Division wherein he states that he has no objection if the salaries of the casual labour are paid by the department directly as they are working on their own and not through contractor/agency during the period from 1.12.2004 to 30.11.2005. Therefore, in view of the documents Ex.W1 to W10 discussed above, it goes to show that petitioners had been working in the office of Respondent No.3 as a casual labour from 11.11.1998 to 31.01.2007. In view of ban imposed by head office regarding employment of daily wager, Respondent No.3 has to engage the casual labour through contractor agency i.e. M/s Krishna Employment information & Services i.e Respondent No.4 and payment of wages of casual labour engaged by them have been paid to the agency as alleged by Respondent. The petitioner has taken the plea that he was not engaged through R4 in Respondent No.3 office, and he was working in the office of R3 since 1998 upto the date of termination 31.1.2007. Similar document Ex.W1 to W10 as discussed above has been filed and proved by the petitioners in LCID 81 of 2007 and LCID 82 of 2007 and Respondent has not filed any document in rebuttal of its.

In the light of evidence discussed as above, the facts stand proved that all the petitioners above had worked in the office of Respondent No.3 from 1998 to 2007, 1998 to 2007 and 1999 to 2007 respectively. The oral and documentary evidence produced by the petitioner in support of their plea remained uncontroverted and unrebutted. Moreover, the Respondent has not specifically denied the fact in their counter that the petitioners were not engaged as a casual labour for the said period in the office of Respondent.

20. Now, we should examine whether disengagement of petitioners, S/Sri 1) B Vanamanna, 2) P Nagaraju and 3) P Srinivasulu by Respondent No.3 w.e.f 31.1.2007 was done in contravention of provisions of section 25-F of ID Act. Petitioner has specifically pleaded that they had worked in Respondent No.3 office since they were appointed and in each calendar year had worked for more than 240 days. Respondent No.3 submitted in his counter that the petitioner had not worked 30 days in every month and he worked different days excluding Saturdays, Sundays and holidays declared by government.

21. The relevant provision of section 25-F provides as below:-

> ***25-F. Conditions precedent to retrenchment of workmen***.--*No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until –*

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice.

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.

The provision of section 25-B which define term continuous service reads as below:

***25-B. Definition of continuous service**.-For the purposes of this Chapter—*

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness for authorised leave or an accident or a strike which is not illegal, or lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer--

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than --

(i) one hundred and ninety days in the case of a workman employed below

ground in mine ; and

(ii) two hundred and forty days, in the other case;

22. Thus it is clear from definition as above that for continuous service u/s section 25-B, the workman is said to be in continuous service for a period in uninterrupted service including interrupted service on account of sickness / accident /strike or cessation of work which is not due to any fault on the part of workman and he has completed 240 days in one calendar year just preceding from date of termination.

The perusal of pleading goes to reveal that there is no such allegation against the petitioner by the Respondent in the counter that there was any interruption in 240 days service due to any fault on part of workman. The Respondent only says that the petitioner has worked on different days excluding Saturdays, Sundays and holidays declared by government. Therefore, no fault can be attributed to petitioner for required uninterrupted continuous service for 240 days. Therefore it can safely be concluded that petitioners had worked for 240 days in the calendar year just preceding from the date of termination i.e. 31.1.2007.

23. ***In the case of Rajasthan State Ganganagar S Mills Ltd Vs State of Rajasthan & Another (2004) 8 SCC 161, Municipal Corporation, Faridabad Vs Siri Niwas (2004) 8 SCC 195**, Hon'ble Apex Court held that the principal that the burden of proof lies on the workman to show that he had worked continuously for 240 days in the preceding one year prior to his alleged retrenchment and it is for the workman to adduce an evidence apart from examining himself to prove the factum of his being in employment of the employer*.

Thus, in the present matter the petitioner, by oral as well as documentary evidence has discharged his burden of proof to prove that he had worked for 240 days prior to his alleged retrenchment and the same has not rebutted by Respondent by any evidence.

24. Admittedly, petitioner Sri B Vanamanna was engaged on 11.11.1998 and disengagement done on 31.1.2007 and before disengagement, no notice was given by Respondent to the petitioner nor paid one month wage in lieu of notice. Further no retrenchment compensation was paid to the petitioner by Respondent. This fact has been proved by the petitioner in his evidence. Since no cross examination of the WW1 done by Respondent despite providing sufficient opportunity, thus the statement of witness WW1 remained unrebutted and stands proved. Further no documentary evidence produced by Respondent to contravent the plea of petitioner that they have paid compensation and gave notice to petitioner before retrenchment. Therefore, in view of the above discussions, it can safely concluded that the retrenchment of petitioner was done by Respondent by disengaging him from 31.1.2007 was in violation of provision of section 25-F of ID Act. Whereas it is settled law that compliance of section 25-F of ID Act before retrenchment, on whatsoever ground, of any workman is mandatory and in contravention of provisions of section 25-F the retrenchment would be

illegal. Thus in the present matter the petitioner had worked for more than 240 days continuously in one year preceding their disengagement and they were not given any notice or pay in lieu of notice as well as retrenchment compensation. Thus, in the present matter, pre-condition of retrenchment was not complied with by Respondent and it can be concluded that the disengagement of petitioner from services was illegal as being in contravention of provision of section 25-F of ID Act.

25. Similarly in LCID 81 of 2007, petitioner Shri P Nagaraju and in LCID 82/2007, Petitioner Shri P Srinivasulu had worked continuously for 240 days and their plea has been proved by their oral and documentary evidence which remains unrebutted in the absence of evidence of the respondent. Further, these petitioners has not been issued with any notice of retrenchment and nor paid any wages in lieu of notice. Further, they were not paid any compensation u/s 25-F of ID Act, 1947. Therefore the disengagement of petitioners namely 1) B Vanamanna, 2) P Nagaraju and 3) P Srinivasulu has been done in violation of provisions for pre-condition of retrenchment as provided u/s 25-F of ID Act, 1947.

This point is answered accordingly.

26. **Point No.(b):** Now, question arises that in case of termination of daily wage workmen in contravention of provision of section 25-F of ID Act, what relief should be granted to them. It is settled law that in case of disengagement of services of daily wages workmen in contravention of section 25-F, it is not necessary that in every case the relief of reinstatement should be given as a matter of right and the compensation in lieu of reinstatement should be granted to the disengaged daily wage worker.

In this regard Hon'ble Apex Court in the case of Hari Nandan Prasad Vs Employer I/R to management of FCI in Civil Appeal No.2417-2418 of 2014 dated 17.02.2014 held and laid down that :-

"in the case of BSNL VS. Bhurumal 2013 (15) SCALE 131 which has taken note of the earlier case law relevant to the issue. Following passage from the said judgment would reflect the earlier decisions of this Court on the question of reinstatement: "The learned counsel for the appellant referred to two judgments wherein this Court granted compensation instead of reinstatement. In the case of BSNL Vs. Man Singh (2012) 1 SCC 558, this Court has held that when the termination is set aside because of violation of Section 25-F of the Industrial Disputes Act, it is not necessary that relief of reinstatement be also given as a matter of right. In the case of Incharge officer & Anr. vs. Shankar Shetty (2010) 9 SCC 126, it was held that those cases where the workman had worked on daily wage basis, and worked merely for a period of 240 days or 2-3 years and where the termination had taken place many years ago, the recent trend was to grant compensation in lieu of reinstatement. In this judgment of Shankar Shetty, this trend was reiterated by referring to various judgments, as is clear from the following discussion. Should an order of reinstatement automatically follow in a case where the engagement of a daily wager has been brought to end in violation of Section 25-F of the Industrial Disputes Act, 1947 (for short "the ID Act")? The course of the decisions of this Court in recent years has been uniform on the above question. In Jagbir Singh vs. Haryana State Agriculture Mktd. Board (2009) 15 SCC 327 delivering the judgment of this Court, one of us (R.M.Lodha,J.) noticed some of the recent decisions of this Court, namely, U.P.State Brassware Corpn. Ltd. Vs. Uday Narain Pandey (2006) 1 SCC 479, Uttaranchal Forest Department Corpn. Vs. M.C.Joshi (2007) 9 SCC 353, State of M.P. vs. Lalit Kumar Verma (2007) 1 SCC 575, M.P.Admn. vs. Tribhuban (2007) 9 SCC 748, Sita Ram vs. Moti Lal Nehru Farmers Training Institute (2008) 5 SCC 75, Jaipur Development Authority vs. Ramsahai (2006) 11 SCC 684, GDA vs. Ashok Kumar (2008) 4 SCC 261 and Mahboob Deepak vs. Nagar Panchayat, Gajraula (2008) 1 SCC 575 and stated as follows: (Jagbir Singh case, SCC pp.33o & 335 paras 7 & 14). It is true that the earlier view of this Court articulated in many decision reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice."

27. Therefore, in view of the law laid down by Hon'ble Apex Court in Hari Nandan Prasad Vs FCI, in the present matter petitioner 1) Mr B Vanamanna, 2) Mr P Naga Raju and 3) P Srinivasulu were engaged as daily wage workers and they have put in service as a daily wager for 240 days or more and they have been terminated without following condition precedent as per provision of section 25-F of ID Act. In the fact and circumstances of the case all the three petitioners are liable for payment of lumpsum compensation, because they were engaged as daily wage workmen and were not appointed against any permanent post in the office of respondent management. The Respondent No. 3 in the office of Government statutory body and condition of services Conduct and recruitments are regulated by rules and regulations and no person can be appointed without following the procedure for recruitment as per rules. Further, they have been terminated long back in the year 2007 i.e. more than 16 year has been elapsed since then. It is not the case of petitioner that in their place any

other person has been engaged by the Respondent nor it has been proved. Therefore, in such circumstances as discussed above and in view of the law laid down by the Apex Court in Hari Nandan Prasad Vs FCI, instead of relief of reinstatement of petitioner, the grant of compensation would be appropriate relief in the present matter and it would meet end of justice.

28. Now, question arises what quantum of amount of compensation would be appropriate that should be granted to serve ends of justice. It is undisputed fact that all petitioners has served the Respondent office as daily wage worker for the period about 8 years. Petitioners has pleaded that they worked directly in the department during that period which goes unrebutted. Therefore, keeping in view of circumstances of case and plight of petitioner, Tribunal is of the opinion that payment of lumpum compensation to the tune of Rs.1,50,000/- (Rupees One lakh fifty thousand only) to each petitioner would meet the end of justice.

29. **Point No.(c):** As per contention of the petitioner is concerned that Respondent has not paid their wages from 2004 till date of termination i.e. 31.1.2007. Respondent has submitted in this regard that they have paid total salary to agency and all casual workers have received the salary from agency except the petitioner. It is further contended that petitioner has demanded salary amount of Rs.87,960/- and it is not correct. Thus, it is admitted by Respondent that salary for the period for 2004 to 2007 was not paid to these petitioner. Contractor agency i.e Respondent No.4 has also not paid to them. On the other hand, Respondent No.4, the contract labour agency, has admitted that petitioner was not engaged by them and they were working independently in the department hence wages were not paid to the petitioners by Respondent No.4. Respondent No.3 did not produce any document to the effect that petitioners namely 1) B Vanamanna, 2) P Nagaraju and 3) P Srinivasulu have been paid wages for said period from 2004 to 2007 as they claimed. Therefore, petitioners are also liable for wages amount to be paid for the period from 2004 to 2007 i.e till the date of termination from service by Respondent No.3.

AWARD

1. In LCID 80 of 2007, the claim petition of Shri B Vanamanna is partly allowed and in view of the finding given in the point No (a), (b) and (c), petitioner is not liable for reinstatement in the employment and he is liable for payment of lumpsum compensation to the tune of Rs.1,50,000/- (Rupees One lakh fifty thousand only). He is also liable of payment of arrear of wages for the period from 1.12.2004 to 31.1.2007. Respondent is directed to pay the compensation amount as well as arrear of wages to petitioner within four months from the date of order.

2. In LCID 81 of 2007, the claim petition of Shri P Nagaraju is partly allowed and in view of the finding given in the point No (a), (b) and (c), petitioner is not liable for reinstatement in the employment and he is liable for payment of lumpsum compensation to the tune of Rs.1,50,000/- (Rupees One lakh fifty thousand only). He is also liable of payment of arrear of wages for the period from 1.12.2004 to 31.1.2007. Respondent is directed to pay the compensation amount as well as arrear of wages to petitioner within four months from the date of order.

3. In LCID 82 of 2007, the claim petition of Shri P Srinivasulu is partly allowed and in view of the finding given in the point No (a), (b) and (c), petitioner is not liable for reinstatement in the employment and he is liable for payment of lumpsum compensation to the tune of Rs.1,50,000/- (Rupees One lakh fifty thousand only). He is also liable of payment of arrear of wages for the period from 1.12.2004 to 31.1.2007. Respondent is directed to pay the compensation amount as well as arrear of wages to petitioner within four months from the date of order.

Copy of this award be kept in LCID 81 of 2007 and in LCID 82 of 2007 for record purpose.

Award is passed accordingly.

Dictated to Shri J Vijaya Sarathi, Secretary to the Court, transcribed by him and corrected by me on this the 3rd day of April, 2023.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
(in LCID 80/2007)	
WW1: Sri B Vanamanna	NIL
(in LCID 81/2007)	

WW1: Sri P Naga Raju NIL

(in LCID 82/2007)

WW1: Sri P Srinivasulu NIL

Documents marked for the Petitioner

Ex.W1: Copy of letter dated 23.8.2006

Ex.W2: Copy of order in WPMP No. 21154 of 2005 dated 1.8.2005.

Ex.W3: Copy of correspondence dated 30.11.2005

Ex.W4: Copy of order in OA No 1303 of 2004 dated 16.12.2004.

Ex.W5: Copy of application of petitioner dated 10.10.2006.

Ex.W6: Copy of correspondence dated 23.11.2006

Ex.W7: Copy of correspondence dated 2.11.2005

Ex.W8: Copy of representation dated 23.11.2005

Ex.W9: Copy of correspondence dated 24.11.2005

Ex.W10: Copy of correspondence dated 2.12.2005

Documents marked for the Respondent

Nil

नई दिल्ली, 10 मई, 2023

का.आ. 784.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मुख्य महाप्रबंधक, दूरसंचार, बीएसएनएल, एबिड्स, हैदराबाद ; सहायक महाप्रबंधक (प्रशासन), ओ/ओ सीजीएमटी, ए.पी. सर्किल, हैदराबाद, के प्रबंधतंत्र के संबद्ध नियोजकों और श्री अमुदाला लक्ष्मण, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-हैदराबाद के पंचाट (संदर्भ संख्या.17/2017) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 10.05.2023 को प्राप्त हुआ था।

[सं. एल- 42025-07-2023-83-आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 10th May, 2023

S.O. 784.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 17/2017) of the Central Government Industrial Tribunal cum Labour Court – Hyderabad as shown in the Annexure, in the Industrial dispute between the employers in relation to The Chief General Manager, Telecommunications, BSNL, Abids, Hyderabad ; The Assistant General Manager (Admn.), O/o CGMT, A.P. Circle, Hyderabad, and Shri Amudala Lakshmana,Worker, which was received along with soft copy of the award by the Central Government on 10.05.2023.

[No. L- 42025-07-2023-83-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT AT HYDERABAD

Present: - Sri IRFAN QAMAR, Presiding Officer

Dated the 27th day of April, 2023

INDUSTRIAL DISPUTE L.C.No. 17/2017

Between:

Sri Amudala Lakshmana,
S/o Kotaiah,
R/o H.No.4-7-346/4/1/A,
Khammam District. – 507204. ..….Petitioner

AND

1. The Chief General Manager,
Telecommunications, BSNL,
Abids, Hyderabad.

2. The Assistant General Manager (Admn.)
O/o CGMT, A.P. Circle,
Hyderabad – 1. ….Respondents

Appearances:

For the Petitioner : M/s. M.V. Hanumantha Rao, Advocates
For the Respondent: Sri S. Prabhakar Reddy, Advocate

AWARD

Sri Amudala Lakshmana, who worked as Mazdoor (who will be referred to as the workman) has filed this petition under Sec. 2A(2) of the Industrial Disputes Act, 1947 against the Respondents, Railway Electrification Project (REF), BSNL, Secunderabad seeking for declaring the proceeding No. TA/STB/20-2/REP/06-10/20 dated 27.4.2010 issued by the Respondent as illegal, arbitrary, discriminatory, violative of principles of natural justice and to set aside the same consequently directing the Respondents to regularize or re-engage the Petitioner into service duly granting all the consequential benefits and such other reliefs as this court may deems fit.

2. **The averments made in the petition in brief are as follows**:

It is submitted that the Petitioner has worked as Mazdoor in Railway Electrification Project(REF) Secunderabad to Nagpur from 1.1.1994 to 30.9.1996 for 1004 days along with others. The Petitioner submitted that thereafter he along with others continued on voucher payment basis for some time and thereafter on contract basis. Petitioner along with others has been requesting for regularization or to provide regular work still no action has been taken by the department, though they have worked for a considerable period. Further, petitioner came to know that by proceedings dated 21.11.2000 similarly situated 79 persons have been regularized by giving them "temporary status" by the respondent, in fact those persons are juniors to the petitioner and other similarly situated persons. Petitioner hails from poor family and have been pursuing the authorities since long time with a hope that the department would consider her claim in a positive manner. Petitioner submits that, as there was no action taken by the respondents he along with others approached Hon'ble Central Administrative Tribunal, Hyderabad Bench, at Hyderabad by filing OA. Nos. 100/10 and 101/10 and the Hon'ble Tribunal after hearing both the parties disposed of the OAs, on 10.2.2010 with specific directions "since the applicants in the OA also have similar claims as the applicants in the WP.No.12872/08, I consider it appropriate to dispose of this Original Application by giving a direction to the applicants to file individual representations to the respondents giving full details namely, their addresses, places at which they were engaged, the period for which they were engaged etc., within a period of 4 weeks and on receipt of such representations, the respondents shall examine their applications with reference to the records and the scheme that was in force and pass orders within a period of 3 months from the date of receipt of such representation." It is submitted that, as per the orders of the Hon'ble Tribunal the petitioner and others have submitted elaborate representations to the Respondent No.1 along with order passed by Hon'ble Tribunal and also attendance book etc. on 3.3.2010 the Respondent No.1 instead of appreciating the circumstances and without proper verification of records and without providing opportunity of being heard, Respondent has issued the impugned letter dt.8.6.2010 stating,

" i) With reference to the representation, pursuant to the directions of the Hon'ble Tribunal dated 10.2.2010 in OA. No. 100/10 it is informed that the same has been duly considered having regard to the policy and availability of records and it is regretted that it is not open to re-engage you as casual labours or grant of temporary status under the scheme dt.7.10.1989 which has exclusive application to casual labour who have

engaged prior to 31.10.1985 up to 22.6.1988 and continued as such. The following have duly taken into consideration for the aforesaid decision. All the casual labors who were eligible as per letter dt.29.9.2000 of DOT were regularized as one time measure.

(ii) Records pertaining to Railway electrification Project are not available for due verification of information furnished by you as they were weeded out as per the retention schedule. The letter of appointment and payment thereof is requisite record to verify your engagement from 1.1.1994 to 30.9.1996 and the basis for the same while DOT, New Delhi letter No.270-6/84-STN dt.22.6.1988 imposed ban on engagement of casual labours including project circle.

(iii) The certification by the Divisional Engineer about such engagement is not acceptable in the absence of records as indicated above.

(iv) It is stated that you have been disengaged as casual labour and also thereafter continued with contractor and thus there is no employer-employee relationship at any point of time thereafter and as such there is no scope to re-engage you as casual labour and also in view of the complete ban as per DOT, New Delhi letter no. 269-4/93 STN-II dt. 12.2.1999 and further affirmed vide letter no.269-4/93/STN Il dt.15.6.1999 and the said policy is continuing.

v) The violation of provisions of Sec.25F of ID Act, 1947 having questioned in the appropriate forum at any time and as such disengagement has become final for all purposes.

vi) This disposes of your representation and it is hereby clarified that no further correspondence will be entertained on this subject."

Petitioner submitted that the proceedings dated 27.4.2010 are ex.facie illegal, arbitrary, discriminatory and contrary to record and violative of principles of natural justice and violative of Art. 14 and 16 of Constitution of India. It is submitted when similarly situated persons were regularized the respondent ought to have extended the same benefit to the petitioner also. Further, the reasoning recorded by the respondent as mentioned in the clause-(i) of the impugned order stating that benefit of extension of temporary status under scheme dated 7.10.1989 is only for casual labours who have engaged prior to 31.10.1985 up to 22.6.1988 is not tenable and when the department had extended similar benefit to similarly situated persons and having extracted work from the petitioner during subsequent period, denial of said benefit amounts discrimination. The contention of the respondents as mentioned in clause-(ii), records pertaining to Railway Electrification Project are not available as have weeded out as per the retention schedule is also not tenable. It is submitted non-availability of the records in the department cannot be attributed to the petitioner and respondent ought to have accepted the records produced by the petitioner. It is submitted regarding para no (4) of the impugned order that when similarly situated persons were engaged and records shows the services rendered by the petitioner the contention that there is no relationship as employer and employee is also not tenable. Clause (5) of the order is not maintainable in respect of the claims of petitioner as he has been pursuing with the department to re-engage him in the respondent department in view of their past experience. The petitioner is having record and also the department had considered similarly situated persons as such the petitioner is entitled for relief. It is submitted that the impugned order is not only illegal but also contrary to earlier directions issued by the Hon'ble Central Administrative Tribunal as such as a last resort the petitioner is approaching this Hon'ble court. The petitioner, along with others approached Hon'ble Central Administrative Tribunal Hyderabad Bench at Hyderabad and filed OA. No. 1229/2010 and after hearing both the sides the Hon'ble Tribunal has directed the applicants therein to approach concerned Labour court under Industrial Dispute Act, 1947 and hence, this petition. It is submitted the petitioner and others have filed their concerned days book duly signed by the employer on every month ending, identity card, etc., the days book clearly postulates all the relevant information of the petitioner with regard to work i.e. MRPTS work, cable work, or alignment, store work, etc., and Petitioner was paid Rs.60/- per day. It is therefore prayed that this Hon'ble Tribunal may be pleased to i) Declare the impugned letter No.TA/STB/20-2/REP/06-10/20 dated 27.4.2010 issued by the respondent as illegal arbitrary, discriminatory and violative of principles of natural justice and consequently set aside the said letter.

3. **The Respondents filed counter denying the averments made in the petition, with the averments in brief which runs as follows**:

The Respondent submitted that the claim petition is misconceived and is barred by limitation. There is no engagement of casual labour in BSNL, after 1.10.2000 and the casual labour who have been engaged as such before the imposition of ban vide letter No.270/6/84-STN, New Delhi dated 30.3.1985 and letter No.270-6/84-STN dated 22.6.1988 for the project circles and the line dismantling in the Electrification project circles have been continued in BSNL as a matter of policy and the Petitioner having been engaged in the project after the imposition of ban vide letter dated 22.6.1988 is not covered by the policy thereof and it is not open for the Petitioner to assert for reengagement or regularization under the said policy. The claimant is confusing the

Hon'ble Tribunal with regard to the letter No.TA/STB/20-2/REP/06-10/22 dated 27.4.2010 pursuant to the directions of the Hon'ble Central Administrative Tribunal dated 10.2.2010, in OA No.100/2010 filed in continuation of WP No.12872/2008 in the High Court seeking for the identical relief and the communication dated 27.4.2010 based on the directions dt.10.2.2010 in O.A.No.100/2010 to comply with a judicial order notwithstanding the fact that the said O.A.No.100/2010 is misconceived and not maintainable having regard to the definition of employee in Rule 3(8) of BSNL & CDA Rules, 2006 implemented as such from 10.1.2006 thereby leaving no scope to exercise any jurisdiction by the Hon'ble Tribunal and on 28.2.2011 in O.A.No.1229/2010. It is not open for the claimant to assail the same before this Hon'ble Court in any manner for any purpose. The Railway Electrification project for line dismantling is distinct and different and the said project is out side jurisdiction of the respondent thereby leaving no scope to reengage any casual labour engaged by the said projects organization after the imposition of the ban and disengaging thereafter and entrustment of the work to a contractor thereby leaving no scope for reengagement and regularization as per the settled law. The Petitioner is relying on the documents which do not form part of the record of the respondent without any letters of engagement and payment particulars while the maintenance of the records in not the administrative concern of the answering respondent and no records as such are maintained after the expiry of three years relating to muster roll as per the retention schedule. It is therefore prayed that this Hon'ble Tribunal may be pleased to dismiss the claim petition.

4. Petitioner filed chief examination affidavit and examined himself as WW1 reiterating the facts stated in claim petition stated that, he has worked as Mazdoor (casual labour) in Railway Electrification Project (REF) Secunderabad to Nagpur from 1.1.1994 to 30.9.19996 for 1004 days along with others. Thereafter, he, along with others continued on voucher payment basis for some time and thereafter on contract basis requesting for regularization and no action has been taken by the department, though they have worked for a considerable period. Petitioner marked Photostat copies of documents which were marked as Ex.W1 to W13. During the cross examination Petitioner stated that he worked from 1994 to 1996 in the Railway Electrification Project and again he worked in the office of Divisional engineer, Secunderabad for two years. He do not know whether that project exists or not.

5. Respondent did not adduce any evidence on their behalf. Both parties filed written arguments as well as submitted oral arguments.

6. Heard. Perused the record.

7. **The following points arise for consideration**:-

I. Whether the Petitioner is eligible to be regularized as temporary status with Respondent employment under the scheme Casual Labourers (Grant of Temporary Status and Regularization) Scheme 1989?

II. Whether order dated 27.4.2010 passed by Respondent on Petitioner's representation is just?

III. To what relief if any, the Petitioner is entitled?

Finding:

8. **Points No.I & II**: Before proceeding to determination on points, it would be relevant to narrate the facts in the back drop of the matter. As pleaded by Petitioner workman Sri Amudala Lakshmana, he has worked as mazdoor (casual labour) in Railway Electrification Project, Secunderabad to Nagpur from 1.1.1994 to 30.9.1996 for 1004 days along with others. The Petitioner along with others continued on voucher payment basis for some time and thereafter on contract basis. He along with others have been requesting for regularization and to provide the regular work. Still no action has been taken by the Department, though they have worked for a considerable period. It is also pleaded that Petitioner came to know that by proceedings dated 21.11.2000 similarly situated 79 persons have been regularized by giving them temporary status by the Respondents. Since no action was taken by the Respondents he along with others approached Hon'ble Central Administrative Tribunal, Hyderabad Bench at Hyderabad by filing OA No.100/10 and 101/10 and the Hon'ble Tribunal after hearing both the parties disposed of the OAs, on 10.2.2010 with specific direction which reads as follows: "since the applicants in the OA also have similar claims as the applicants in the WP No.12872/08, I consider it appropriate to dispose of this OA by giving a direction to the applicants to file individual representations to the respondents giving full details namely, their addresses, places at which they were engaged, the period for which they were engaged etc., within a period of 4 weeks and on receipt of such representations, the respondents shall examine their applications with reference to the records and the scheme that was in force and pass orders within a period of 3 months from the date of receipt of such representation." The Petitioner in compliance of the above order moved representation dated 3.3.2010 to the Respondent authority and Respondent rejected the representation by passing impugned order dated 27.4.2010. Against this impugned order present industrial dispute petition has been filed by the workman before the Tribunal. It is also

submitted that the Petitioner along with others have challenged impugned order dated 27.4..2010 rejecting the representation of Petitioner and filed OA No.1229/2010 and after hearing both the sides Hon'ble Tribunal has directed the applicant to approach the labour court under I.D. Act, 1947. The copy of the order dated 28.2.2011 passed in OA No.1229/2010, **G. Pentaiah and others Vs. Union of India** has been filed wherein Hon'ble Tribunal has observed as below:

> *"8. Admittedly, the applicants were engaged between 1.1.1994 and 30.9.1996 and they do not come under the scope of the scheme. However, a direction was given by this Tribunal earlier to examine their cases since the applicants claimed that some juniors who were appointed subsequently had been regularized. I now find that the Respondents have rejected the claim on the ground that relevant records have been weeded out. the matter raised disputed questions of fact viz., whether the applicants were employed as casual labourers for more than 1000 days and whether they are eligible for temporary status, etc. In the absence of records, it is not possible for this Tribunal to adjudicate this matter.*
>
> *9. I, therefore, dispose of this application with a direction to the applicants to approach the labour authorities under the Industrial Disputes Act, 1947, if they are so advised, with all the relevant material so that a decision on their eligibility for temporary status or otherwise can be taken by the Respondent authorities. The Learned Counsel for the applicants has no objection to such a direction being given."*

Therefore, in view of the above direction of Hon'ble Central Administrative Tribunal, we proceed to decide to determine the question whether the applicant was engaged as casual mazdoor for more than 1000 days and they are eligible for temporary status.

9. In this regard, the Petitioner has pleaded that he has got engaged as mazdoor(casual labour) in Railway Electrification Project, Secunderabad to Nagpur form 1.1.1994 to 30.9.1996 for 1004 days along with others. It is also submitted that he along with others continued as such on voucher payment basis and later on contract basis.

10. On the other hand the Respondent has filed counter stating therein that there is no engagement of casual labour in BSNL after 10.10.2000 and the casual labour who have been engaged as such before the imposition of ban vide letter No.270/6/84-STN, New Delhi dated 30.3.1985 and letter No.270-6/84-STN dated 22.6.1988 for the project circles and the line dismantling in the Electrification project circles have been continued in BSNL as a matter of policy and the Petitioner having been engaged in Railway Electrification Project after the imposition of ban in project circles vide letter dated 22.6.1988 is not covered by the policy thereof and it is not open for the Petitioner to assert for reengagement or regularization under the said policy. It is submitted that the Petitioner is not covered under the definition of employee with Rule 3 sub clause 8 of BSNL & CDA Rules, 2006. Therefore, it is not open for the claimant to assail the same in any manner for any purpose. It is also submitted that Railway Electrification Project for line dismantling is distinct and different and the said projects is out side jurisdiction of the answering Respondent thereby leaving no scope to reengage any casual labour engaged by the said projects organization after the imposition of the ban and disengaging thereafter and entrustment of the work to a contractor thereby leaving no scope for reengagement and regularization as per the settled law. It is clear from pleadings of the parties that the Petitioner had worked as a mazdoor in Railway Electrification Project of the Respondent on contract basis. The Petitioner has submitted the documents in support of his allegation which are: Ex.W1 is photocopy of order dated 27.4.2010 which the Respondent authority has rejected the representation of the Petitioner by assigning reasons therein. Ex.W2 is a copy of representation dated 3.3.2010. The last para of the representation reveals that Petitioner has prayed for relief from Respondent to provide him employment, whereas in petition he has sought relief of regularization in the Respondent employment. Document Ex.W3 and W4 are photocopies of the orders of Hon'ble Central Administrative Tribunal passed in OA 1229/2010 and 100/2010. Other document Ex.W5 is photocopy of order passed in OA No.101/2010 dated 10.2.2010. The documents Ex.W6 to W9 are photocopies of the proceedings which were supplied by the Respondent to the Petitioner which contains list of casual labour. Ex.W10 is photocopy of letter regarding temporary status and Ex.W11 is the attendance sheets of the workman Petitioner which has been signed by Divisional Engineer, Telecom, Secunderabad which reveals that the Petitioner has worked as mazdoor from 1.1.1994 to 30.9.1996 in Railway Electrification Project.

11. **It would be relevant to reproduce the provision of Sec.2(oo)(bb) of I.D. Act, 1947 which provide that,**

> *" (oo) "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include:-*

(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; "

12. **The Hon'ble Apex Court in the case of S.M. Nilajkar and ors. Vs. Telecom, District Manager has held:** "*the termination of the service of workman engaged in a scheme or project amounts to retrenchment within the meaning of sub-clause (bb) subject to the following provision being satisfied:*

i) That the workman was employed in a project or scheme of temporary duration;

ii) The employment was on contract and not as a daily wager simplicitor, which provided inter alia that the employment shall come to an end on the expiry of the scheme or project; and

iii) The employment came to an end simultaneously with the termination of the scheme or project and consistently with the terms of the contract.

iv) The workman ought to have been apprised or made aware of the above said terms by the employer at the commencement of employment."

13. Since the Petitioner has alleged that he has worked as mazdoor from 1.1.1994 to 30.9.1996 in the Railway Electrification Project as contract labour. It goes to show that Petitioner has worked in the Respondent employment on a project which is open for a limited time and after completion of the project the Petitioner cannot claim any employment or regularization in the service of the Respondent. As far as the contention of the Petitioner is concerned that he should be regularized as other casual workers regularized under the scheme, it is settled law that any contract workman has no right to seek regularization of employment from employer, since it is a matter of discretion of the employer. Even otherwise, if a fresh contract contemplated to secure employee appointment with higher qualification or seek a fresh job on contractual employment having more skills, the employer will always have an authority to decide what is best for improving its functioning and which can be depend on work requirements.

14. Petitioner contended that Respondent has mentioned that in the impugned order the record pertaining to Railway Electrification Project are not available for due verification of the information furnished by the Petitioner. As they have weeded out as per retention schedule. The letter of appointment and payment thereof is requisite record to verify the engagement from 1.1.1994 to 30.9.1996. It is the duty of the authority to protect official files and record, it would be worthy to mention here that Petitioner had worked as Mazdoor in Respondent project for the period 1994-1996 as contract labour and he raised present industrial dispute by filing the petition u/s 2A(2) of the I.D. Act, 1947 in July, 2012. Long span of time more than 15 years have elapsed. Respondent in his counter has stated that no record as such are maintained after the expiry of three years relating to the muster roll as per the retention schedule. Since there was gross latches of inordinate delay on the part of Petitioner in raising present industrial dispute. Respondent is not supposed to maintain record of contractual labour beyond retention schedule. Therefore, in the case of non-production of the record by the Respondent, no adverse inference can be drawn against him in this case.

15. Respondent submitted that there is no engagement of casual labour in BSNL after 1.10.2000 and the casual labour who have been engaged before the imposition of the ban vide letter No.270/6/84-STN dated 30.3.1985 and letter No.270-6/84-STN dated 22.6.1988 for the project circles and the line dismantling in the Electrification project circles have been continued in BSNL as a matter of policy and the Petitioner having been engaged in Railway Electrification Project after the imposition of ban in project circles vide letter dated 22.6.1988 is not covered by the policy thereof and it is not open for the Petitioner to assert for reengagement or for regularization under the said policy. The Respondent has submitted the copy of letter No.270/6/84-STN dated 30.3.1985 wherein it is mentioned that the Telecom Department has directed to stop the recruitment or employment of casual labour of any kind, any type of work. Further, copy of letter No.270-6/84-STN dated 22.6.1988 which is regarding casual labour recruitment wherein it is mentioned (para 2) that, there shall be no recruitment of casual labour even for specific period and it was directed to Respondent Department to engage from neighbouring divisions, employed for the project or electrification work. Further, the copy of the letter of DG Telecom, New Delhi dated 7.11.1989 has been filed wherein it is mentioned that the casual labourers could be engaged after 30.3.1985 in projects and Electrification Circles only for specific works and on completion of the work the casual labourers so engaged were required to be retrenched. It is also mentioned that as per the direction in letter dated 22.6.1988 fresh recruitment of casual labourers even for specific works for specific periods in Projects and Electrification Circles also should not be resorted to. Therefore, in view of the ban on engagement of casual labourers the claim of the Petitioner is not maintainable. Since the Petitioner was engaged through contractor in the Railway Electrification Project which was meant for a specific period and after completion of the project work his employment is terminated and he is not eligible to claim for regularization in view of above letters and his status as contract labour.

16. Now the question arises whether there existed employee and employer relationship between the claimant and Respondent. Petitioner has admitted the fact that he was doing the work as a contract labourer in the Respondent Department. Further, to prove the employment there has to be a strict evidence to show some nexus between the claimant and the Respondent. This can be any kind such as appointment letter, monthly payment slip, deduction of Provident Fund, payment of any dues, which can show that he was in the employment of the Respondent. **In the case of Automobile Association of Upper India vs. Presiding Officer Labour Court-II, 2006 LLR page 851 wherein the** Hon'ble Delhi High Court held, " *Engagement and appointment in service can be established directly by the existence and production of appointment letter, a written agreement or by circumstantial evidence of incidental and ancillary records which would be in the nature of attendance register, salary registers, leave records, deposit of Provident Fund contribution and employees state insurance contribution etc.. The same can be produced and proved by the workers or he can call upon and caused the same to be produced and proved by calling for witnesses who are required to produce and prove these records."*

17. But in the present case the claimant Petitioner has not produced any single piece of evidence showing that he was issued appointment letter by the Respondent. In fact, he has not disclosed date of actual joining of the employment as casual labour of the Respondent. Therefore, the contention of the Petitioner that he was casual labourer is not found to be proved by his evidence. Hence, he was not covered under Regularization Scheme rather he was contract labour as he has admitted in petition.

Thus, Points No.I & II are answered accordingly.

18. **Point No.III**: In view of the above discussion, it is clear that the Petitioner was not a casual labourer, rather had worked as contract labour for the period from 1994 to 1996. Therefore, Petitioner is not eligible to be regularized as a casual labour in the Respondent employment. The impugned order dated 8.6.2010 passed by Respondent needs no interference and petition is liable to be dismissed. In view of the finding given in Points No. I & II, the Petitioner is not entitled to any relief as prayed for regularization or reengagement. However, the Respondent has submitted that this Tribunal has disposed of LC No.8/2012 vide its order dated 29.2.2020 and granted relief of compensation to the Petitioner. In view of the foregone discussion, it is clear that the Petitioner was engaged as a casual labour for the period from 1994 to 1996 and number of days he worked has been verified by the Divisional Engineer as the Petitioner has filed the documentary evidence in support of his claim.

19. **In this regard Hon'ble Apex Court in the case of Hari Nandan Prasad Vs Employer I/R to management of FCI in Civil Appeal No.2417-2418 of 2014 dated 17.02.2014 held and laid down that :-**

"in the case of BSNL VS. Bhurumal 2013 (15) SCALE 131 which has taken note of the earlier case law relevant to the issue. Following passage from the said judgment would reflect the earlier decisions of this Court on the question of reinstatement: "The learned counsel for the appellant referred to two judgments wherein this Court granted compensation instead of reinstatement. In the case of BSNL Vs. Man Singh (2012) 1 SCC 558, this Court has held that when the termination is set aside because of violation of Section 25-F of the Industrial Disputes Act, it is not necessary that relief of reinstatement be also given as a matter of right.

However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice."

Therefore, in view of the above, Petitioner is liable for getting the compensation of Rs.50,000/.

Thus, Point No.III is answered accordingly.

ORDER

In view of the findings given above, it is hereby ordered: The petition of the Petitioner is allowed in part. The Respondents are directed to pay a sum of Rs.50000/- (Fifty thousand rupees) to the Petitioner towards compensation within four months from the receipt of this order, failing which the Petitioner is at liberty to take appropriate steps according to Law.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 27th day of April, 2023.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri Amudala Lakshmana	MW1: Nil

Documents marked for the Petitioner

Ex.W1: Photostat copy of the Order dt 27-4-2010

Ex.W2: Photostat copy of the Representation of WW1 dt.3.3.2010

Ex.W3: Photostat copy of order passed in OA. No. 1229/2011

Ex.W4: Photostat copy of order passed in OA. No. 100/2010

Ex.W5: Photostat copy of order passed in CA. No. 101/2010

Ex.W6: Photostat copy of proceeding of respondent dt 9-5-2007

Ex.W7: Photostat copy of proceeding of Director, BSNL Railway Electrification Project Secunderabad dt. 12-9-2002

Ex.W8: Photostat copy of list of candidates issued by Div. Engineer, Secunderabad dt. 11-9-2002

Ex.W9: Photostat copy of proceeding Dt. 13-11-2007 providing information under RTI Act

Ex.W10: Photostat copy of letter dt.21-11-2000 with regard to temporary status

Ex.W11: Photostat copy of Days Book signed by authority

Ex.W12: Photostat copy of Identity card of petitioner

Ex.W13: Certificate from ALC(C), Hyderabad dated 9.6.2014

Documents marked for the Respondent

NIL

नई दिल्ली, 10 मई, 2023

का.आ. 785.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मुख्य महाप्रबंधक, दूरसंचार, बीएसएनएल, एबिड्स, हैदराबाद; सहायक महाप्रबंधक (प्रशासन), ओ/ओ सीजीएमटी, ए.पी. सर्किल, हैदराबाद, के प्रबंधतंत्र के संबद्ध नियोजकों और श्री मनेपल्ली कृष्णैया, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-हैदराबाद के पंचाट (संदर्भ संख्या 16/2017) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 10.05.2023 को प्राप्त हुआ था।

[सं. एल- 42025-07-2023-84-आईआर(डीयू)

डी. के. हिमांशु, अवर सचिव

New Delhi, the 10th May, 2023

S.O. 785.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 16/2017) of the Central Government Industrial Tribunal cum Labour Court – Hyderabad as shown in the Annexure, in the Industrial dispute between the employers in relation to The Chief General Manager, Telecommunications, BSNL, Abids, Hyderabad ;The Assistant General Manager (Admn.),O/o CGMT, A.P. Circle, Hyderabad, and Shri Manepalli Krishnaiah, Worker, which was received along with soft copy of the award by the Central Government on 10.05.2023.

[No. L- 42025-07-2023-84-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT AT HYDERABAD

Present: - Sri IRFAN QAMAR Presiding Officer

Dated the 27th day of April, 2023

INDUSTRIAL DISPUTE L.C.No. 16/2017

Between:

Sri Manepalli Krishnaiah,
S/o Ramulu,
R/o Mannegudem(V), Jayyaram(Post)
Maripeda(M), Warangal District. …. Petitioner

AND

1. The Chief General Manager,
Telecommunications, BSNL,
Abids, Hyderabad.

2. The Assistant General Manager (Admn.)
O/o CGMT, A.P. Circle,
Hyderabad – 1. ….Respondents

Appearances:

For the Petitioner : M/s. M.V. Hanumantha Rao, Advocates
For the Respondent: Sri S. Prabhakar Reddy, Advocate

AWARD

Sri Manepalli Krishnaiah, who worked as Mazdoor (who will be referred to as the workman) has filed this petition under Sec. 2A(2) of the Industrial Disputes Act, 1947 against the Respondents, Railway Electrification Project (REF), BSNL, Secunderabad seeking for declaring the proceeding No. TA/STB/20-2/REP/06-10/19 dated 27.4.2010 issued by the Respondent as illegal, arbitrary, discriminatory, violative of principles of natural justice and to set aside the same consequently directing the Respondents to regularize or re-engage the Petitioner into service duly granting all the consequential benefits and such other reliefs as this court may deems fit.

2. **The averments made in the petition in brief are as follows**:

It is submitted that the Petitioner has worked as Mazdoor in Railway Electrification Project(REF) Secunderabad to Nagpur from 1.1.1994 to 30.9.1996 for 1004 days along with others. The Petitioner submitted that thereafter he along with others continued on voucher payment basis for some time and thereafter on contract basis. Petitioner along with others has been requesting for regularization or to provide regular work still no action has been taken by the department, though they have worked for a considerable period. Further, petitioner came to know that by proceedings dated 21.11.2000 similarly situated 79 persons have been regularized by giving them "temporary status" by the respondent, in fact those persons are juniors to the petitioner and other similarly situated persons. Petitioner hails from poor family and have been pursuing the authorities since long time with a hope that the department would consider her claim in a positive manner. Petitioner submits that, as there was no action taken by the respondents he along with others approached Hon'ble Central Administrative Tribunal, Hyderabad Bench, at Hyderabad by filing OA. Nos. 100/10 and 101/10 and the Hon'ble Tribunal after hearing both the parties disposed of the OAs, on 10.2.2010 with specific directions "since the applicants in the OA also have similar claims as the applicants in the WP.No.12872/08, I consider it appropriate to dispose of this Original Application by giving a direction to the applicants to file individual representations to the respondents giving full details namely, their addresses, places at which they were engaged, the period for which they were engaged etc., within a period of 4 weeks and on receipt of such representations, the respondents shall examine their applications with reference to the records and the scheme that was in force and pass orders within a period of 3 months from the date of receipt of such representation." It is submitted that, as per the orders of the

Hon'ble Tribunal the petitioner and others have submitted elaborate representations to the Respondent No.1 along with order passed by Hon'ble Tribunal and also attendance book etc. on 3.3.2010 the Respondent No.1 instead of appreciating the circumstances and without proper verification of records and without providing opportunity of being heard, Respondent has issued the impugned letter dt.8.6.2010 stating,

" i) With reference to the representation, pursuant to the directions of the Hon'ble Tribunal dated 10.2.2010 in OA. No.100/10 it is informed that the same has been duly considered having regard to the policy and availability of records and it is regretted that it is not open to re-engage you as casual labours or grant of temporary status under the scheme dt.7.10.1989 which has exclusive application to casual labour who have engaged prior to 31.10.1985 up to 22.6.1988 and continued as such. The following have duly taken into consideration for the aforesaid decision. All the casual labors who were eligible as per letter dt.29.9.2000 of DOT were regularized as one time measure.

(ii) Records pertaining to Railway electrification Project are not available for due verification of information furnished by you as they were weeded out as per the retention schedule. The letter of appointment and payment thereof is requisite record to verify your engagement from 1.1.1994 to 30.9.1996 and the basis for the same while DOT, New Delhi letter No.270-6/84-STN dt.22.6.1988 imposed ban on engagement of casual labours including project circle.

(iii) The certification by the Divisional Engineer about such engagement is not acceptable in the absence of records as indicated above.

(iv) It is stated that you have been disengaged as casual labour and also thereafter continued with contractor and thus there is no employer-employee relationship at any point of time thereafter and as such there is no scope to re-engage you as casual labour and also in view of the complete ban as per DOT, New Delhi letter no.269-4/93 STN-II dt. 12.2.1999 and further affirmed vide letter no.269-4/93/STN Il dt.15.6.1999 and the said policy is continuing.

v) The violation of provisions of Sec.25F of ID Act, 1947 having questioned in the appropriate forum at any time and as such disengagement has become final for all purposes.

vi) This disposes of your representation and it is hereby clarified that no further correspondence will be entertained on this subject."

Petitioner submitted that the proceedings dated 27.4.2010 are ex.facie illegal, arbitrary, discriminatory and contrary to record and violative of principles of natural justice and violative of Art. 14 and 16 of Constitution of India. It is submitted when similarly situated persons were regularized the respondent ought to have extended the same benefit to the petitioner also. Further, the reasoning recorded by the respondent as mentioned in the clause-(i) of the impugned order stating that benefit of extension of temporary status under scheme dated 7.10.1989 is only for casual labours who have engaged prior to 31.10.1985 up to 22.6.1988 is not tenable and when the department had extended similar benefit to similarly situated persons and having extracted work from the petitioner during subsequent period, denial of said benefit amounts discrimination. The contention of the respondents as mentioned in clause-(ii), records pertaining to Railway Electrification Project are not available as have weeded out as per the retention schedule is also not tenable. It is submitted non-availability of the records in the department cannot be attributed to the petitioner and respondent ought to have accepted the records produced by the petitioner. It is submitted regarding para no (4) of the impugned order that when similarly situated persons were engaged and records shows the services rendered by the petitioner the contention that there is no relationship as employer and employee is also not tenable. Clause (5) of the order is not maintainable in respect of the claims of petitioner as he has been pursuing with the department to re-engage him in the respondent department in view of their past experience. The petitioner is having record and also the department had considered similarly situated persons as such the petitioner is entitled for relief. It is submitted that the impugned order is not only illegal but also contrary to earlier directions issued by the Hon'ble Central Administrative Tribunal as such as a last resort the petitioner is approaching this Hon'ble court. The petitioner, along with others approached Hon'ble Central Administrative Tribunal Hyderabad Bench at Hyderabad and filed OA. No. 1229/2010 and after hearing both the sides the Hon'ble Tribunal has directed the applicants therein to approach concerned Labour court under Industrial Dispute Act, 1947 and hence, this petition. It is submitted the petitioner and others have filed their concerned days book duly signed by the employer on every month ending, identity card, etc., the days book clearly postulates all the relevant information of the petitioner with regard to work i.e. MRPTS work, cable work, or alignment, store work, etc., and Petitioner was paid Rs.60/- per day. It is therefore prayed that this Hon'ble Tribunal may be pleased to i) Declare the impugned letter No.TA/STB/20-2/REP/06-10/19 dated 27.4.2010 issued by the respondent as illegal arbitrary, discriminatory and violative of principles of natural justice and consequently set aside the said letter.

3. **The Respondents filed counter denying the averments made in the petition, with the averments in brief which runs as follows**:

The Respondent submitted that the claim petition is misconceived and is barred by limitation. There is no engagement of casual labour in BSNL, after 1.10.2000 and the casual labour who have been engaged as such before the imposition of ban vide letter No.270/6/84-STN, New Delhi dated 30.3.1985 and letter No.270-6/84-STN dated 22.6.1988 for the project circles and the line dismantling in the Electrification project circles have been continued in BSNL as a matter of policy and the Petitioner having been engaged in the project after the imposition of ban vide letter dated 22.6.1988 is not covered by the policy thereof and it is not open for the Petitioner to assert for reengagement or regularization under the said policy. The claimant is confusing the Hon'ble Tribunal with regard to the letter No.TA/STB/20-2/REP/06-10/22 dated 27.4.2010 pursuant to the directions of the Hon'ble Central Administrative Tribunal dated 10.2.2010, in OA No.100/2010 filed in continuation of WP No.12872/2008 in the High Court seeking for the identical relief and the communication dated 27.4.2010 based on the directions dt.10.2.2010 in O.A.No.100/2010 to comply with a judicial order notwithstanding the fact that the said O.A.No.100/2010 is misconceived and not maintainable having regard to the definition of employee in Rule 3(8) of BSNL & CDA Rules, 2006 implemented as such from 10.1.2006 thereby leaving no scope to exercise any jurisdiction by the Hon'ble Tribunal and on 28.2.2011 in O.A.No.1229/2010. It is not open for the claimant to assail the same before this Hon'ble Court in any manner for any purpose. The Railway Electrification project for line dismantling is distinct and different and the said project is out side jurisdiction of the respondent thereby leaving no scope to reengage any casual labour engaged by the said projects organization after the imposition of the ban and disengaging thereafter and entrustment of the work to a contractor thereby leaving no scope for reengagement and regularization as per the settled law. The Petitioner is relying on the documents which do not form part of the record of the respondent without any letters of engagement and payment particulars while the maintenance of the records in not the administrative concern of the answering respondent and no records as such are maintained after the expiry of three years relating to muster roll as per the retention schedule. It is therefore prayed that this Hon'ble Tribunal may be pleased to dismiss the claim petition.

4. Petitioner filed chief examination affidavit and examined himself as WW1 reiterating the facts stated in claim petition stated that, he has worked as Mazdoor (casual labour) in Railway Electrification Project (REF) Secunderabad to Nagpur from 1.1.1994 to 30.9.1996 for 1004 days along with others. Thereafter, he, along with others continued on voucher payment basis for some time and thereafter on contract basis requesting for regularization and no action has been taken by the department, though they have worked for a considerable period. Petitioner marked Photostat copies of documents which were marked as Ex.W1 to W13. During the cross examination Petitioner stated that he worked from 1994 to 1996 in the Railway Electrification Project and again he worked in the office of Divisional engineer, Secunderabad for two years. He do not know whether that project exists or not.

5. Respondent did not adduce any evidence on their behalf. Both parties filed written arguments as well as submitted oral arguments.

6. Heard. Perused the record.

7. **The following points arise for consideration**:-

I. Whether the Petitioner is eligible to be regularized as temporary status with Respondent employment under the scheme Casual Labourers (Grant of Temporary Status and Regularization) Scheme 1989?

II. Whether order dated 8.6.2010 passed by Respondent on Petitioner's representation is just?

III. To what relief if any, the Petitioner is entitled?

Finding:

8. **Points No.I & II**: Before proceeding to determination on points, it would be relevant to narrate the facts in the back drop of the matter. As pleaded by Petitioner workman Sri M. Krishnaiah, he has worked as mazdoor (casual labour) in Railway Electrification Project, Secunderabad to Nagpur from 1.1.1994 to 30.9.1996 for 1004 days along with others. The Petitioner along with others continued on voucher payment basis for some time and thereafter on contract basis. He along with others have been requesting for regularization and to provide the regular work. Still no action has been taken by the Department, though they have worked for a considerable period. It is also pleaded that Petitioner came to know that by proceedings dated 21.11.2000 similarly situated 79 persons have been regularized by giving them temporary status by the Respondents. Since no action was taken by the Respondents he along with others approached Hon'ble Central Administrative Tribunal, Hyderabad Bench at Hyderabad by filing OA No.100/10 and 101/10 and the Hon'ble

Tribunal after hearing both the parties disposed of the OAs, on 10.2.2010 with specific direction which reads as follows: "since the applicants in the OA also have similar claims as the applicants in the WP No.12872/08, I consider it appropriate to dispose of this OA by giving a direction to the applicants to file individual representations to the respondents giving full details namely, their addresses, places at which they were engaged, the period for which they were engaged etc., within a period of 4 weeks and on receipt of such representations, the respondents shall examine their applications with reference to the records and the scheme that was in force and pass orders within a period of 3 months from the date of receipt of such representation." The Petitioner in compliance of the above order moved representation dated 3.3.2010 to the Respondent authority and Respondent rejected the representation by passing impugned order dated 27.4.2010. Against this impugned order present industrial dispute petition has been filed by the workman before the Tribunal. It is also submitted that the Petitioner along with others have challenged impugned order dated 27.4.2010 rejecting the representation of Petitioner and filed OA No.1229/2010 and after hearing both the sides Hon'ble Tribunal has directed the applicant to approach the labour court under I.D. Act, 1947. The copy of the order dated 28.2.2011 passed in OA No.1229/2010, **G. Pentaiah and others Vs. Union of India** has been filed wherein Hon'ble Tribunal has observed as below:

> *"8.Admittedly, the applicants were engaged between 1.1.1994 and 30.9.1996 and they do not come under the scope of the scheme. However, a direction was given by this Tribunal earlier to examine their cases since the applicants claimed that some juniors who were appointed subsequently had been regularized. I now find that the Respondents have rejected the claim on the ground that relevant records have been weeded out. the matter raised disputed questions of fact viz., whether the applicants were employed as casual labourers for more than 1000 days and whether they are eligible for temporary status, etc. In the absence of records, it is not possible for this Tribunal to adjudicate this matter.*
>
> *9. I, therefore, dispose of this application with a direction to the applicants to approach the labour authorities under the Industrial Disputes Act, 1947, if they are so advised, with all the relevant material so that a decision on their eligibility for temporary status or otherwise can be taken by the Respondent authorities. The Learned Counsel for the applicants has no objection to such a direction being given."*

Therefore, in view of the above direction of Hon'ble Central Administrative Tribunal, we proceed to decide to determine the question whether the applicant was engaged as casual mazdoor for more than 1000 days and they are eligible for temporary status.

9. In this regard, the Petitioner has pleaded that he has got engaged as mazdoor(casual labour) in Railway Electrification Project, Secunderabad to Nagpur form 1.1.1994 to 30.9.1996 for 1004 days along with others. It is also submitted that he along with others continued as such on voucher payment basis and later on contract basis.

10. On the other hand the Respondent has filed counter stating therein that there is no engagement of casual labour in BSNL after 10.10.2000 and the casual labour who have been engaged as such before the imposition of ban vide letter No.270/6/84-STN, New Delhi dated 30.3.1985 and letter No.270-6/84-STN dated 22.6.1988 for the project circles and the line dismantling in the Electrification project circles have been continued in BSNL as a matter of policy and the Petitioner having been engaged in Railway Electrification Project after the imposition of ban in project circles vide letter dated 22.6.1988 is not covered by the policy thereof and it is not open for the Petitioner to assert for reengagement or regularization under the said policy. It is submitted that the Petitioner is not covered under the definition of employee with Rule 3 sub clause 8 of BSNL & CDA Rules, 2006. Therefore, it is not open for the claimant to assail the same in any manner for any purpose. It is also submitted that Railway Electrification Project for line dismantling is distinct and different and the said projects is out side jurisdiction of the answering Respondent thereby leaving no scope to reengage any casual labour engaged by the said projects organization after the imposition of the ban and disengaging thereafter and entrustment of the work to a contractor thereby leaving no scope for reengagement and regularization as per the settled law. It is clear from pleadings of the parties that the Petitioner had worked as a mazdoor in Railway Electrification Project of the Respondent on contract basis. The Petitioner has submitted the documents in support of his allegation which are: Ex.W1 is photocopy of order dated 27.4.2010 which the Respondent authority has rejected the representation of the Petitioner by assigning reasons therein. Ex.W2 is a copy of representation dated 3.3.2010. The last para of the representation reveals that Petitioner has prayed for relief from Respondent to provide him employment, whereas in petition he has sought relief of regularization in the Respondent employment. Document Ex.W3 and W4 are photocopies of the orders of Hon'ble Central Administrative Tribunal passed in OA 1229/2010 and 100/2010. Other document Ex.W5 is photocopy of order passed in OA No.101/2010 dated 10.2.2010. The documents Ex.W6 to W9 are photocopies of the proceedings which were supplied by the Respondent to the Petitioner which contains list of casual labour. Ex.W10 is

photocopy of letter regarding temporary status and Ex.W11 is the attendance sheets of the workman Petitioner which has been signed by Divisional Engineer, Telecom, Secunderabad which reveals that the Petitioner has worked as mazdoor from 1.1.1994 to 30.9.1996 in Railway Electrification Project.

11. **It would be relevant to reproduce the provision of Sec.2(oo)(bb) of I.D. Act, 1947 which provide that,**

" (oo) "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include:-

(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; "

12. **The Hon'ble Apex Court in the case of S.M. Nilajkar and ors. Vs. Telecom, District Manager has held:** " *the termination of the service of workman engaged in a scheme or project amounts to retrenchment within the meaning of sub-clause (bb) subject to the following provision being satisfied:*

i) That the workman was employed in a project or scheme of temporary duration;

ii) The employment was on contract and not as a daily wager simplicitor, which provided inter alia that the employment shall come to an end on the expiry of the scheme or project; and

iii) The employment came to an end simultaneously with the termination of the scheme or project and consistently with the terms of the contract.

iv) The workman ought to have been apprised or made aware of the above said terms by the employer at the commencement of employment.

13. Since the Petitioner has alleged that he has worked as mazdoor from 1.1.1994 to 30.9.1996 in the Railway Electrification Project as contract labour. It goes to show that Petitioner has worked in the Respondent employment on a project which is open for a limited time and after completion of the project the Petitioner cannot claim any employment or regularization in the service of the Respondent. As far as the contention of the Petitioner is concerned that he should be regularized as other casual workers regularized under the scheme, it is settled law that any contract workman has no right to seek regularization of employment from employer, since it is a matter of discretion of the employer. Even otherwise, if a fresh contract contemplated to secure employee appointment with higher qualification or seek a fresh job on contractual employment having more skills, the employer will always have an authority to decide what is best for improving its functioning and which can be depend on work requirements.

14. Petitioner contended that Respondent has mentioned that in the impugned order the record pertaining to Railway Electrification Project are not available for due verification of the information furnished by the Petitioner. As they have weeded out as per retention schedule. The letter of appointment and payment thereof is requisite record to verify the engagement from 1.1.1994 to 30.9.1996. It is the duty of the authority to protect official files and record, it would be worthy to mention here that Petitioner had worked as Mazdoor in Respondent project for the period 1994-1996 as contract labour and he raised present industrial dispute by filing the petition u/s 2A(2) of the I.D. Act, 1947 in July, 2012. Long span of time more than 15 years have elapsed. Respondent in his counter has stated that no record as such are maintained after the expiry of three years relating to the muster roll as per the retention schedule. Since there was gross latches of inordinate delay on the part of Petitioner in raising present industrial dispute. Respondent is not supposed to maintain record of contractual labour beyond retention schedule. Therefore, in the case of non-production of the record by the Respondent, no adverse inference can be drawn against him in this case.

15. Respondent submitted that there is no engagement of casual labour in BSNL after 1.10.2000 and the casual labour who have been engaged before the imposition of the ban vide letter No.270/6/84-STN dated 30.3.1985 and letter No.270-6/84-STN dated 22.6.1988 for the project circles and the line dismantling in the Electrification project circles have been continued in BSNL as a matter of policy and the Petitioner having been engaged in Railway Electrification Project after the imposition of ban in project circles vide letter dated 22.6.1988 is not covered by the policy thereof and it is not open for the Petitioner to assert for reengagement or for regularization under the said policy. The Respondent has submitted the copy of letter No.270/6/84-STN dated 30.3.1985 wherein it is mentioned that the Telecom Department has directed to stop the recruitment or employment of casual labour of any kind, any type of work. Further, copy of letter No.270-6/84-STN dated 22.6.1988 which is regarding casual labour recruitment wherein it is mentioned (para 2) that, there shall be no

recruitment of casual labour even for specific period and it was directed to Respondent Department to engage from neighbouring divisions, employed for the project or electrification work. Further, the copy of the letter of DG Telecom, New Delhi dated 7.11.1989 has been filed wherein it is mentioned that the casual labourers could be engaged after 30.3.1985 in projects and Electrification Circles only for specific works and on completion of the work the casual labourers so engaged were required to be retrenched. It is also mentioned that as per the direction in letter dated 22.6.1988 fresh recruitment of casual labourers even for specific works for specific periods in Projects and Electrification Circles also should not be resorted to. Therefore, in view of the ban on engagement of casual labourers the claim of the Petitioner is not maintainable. Since the Petitioner was engaged through contractor in the Railway Electrification Project which was meant for a specific period and after completion of the project work his employment is terminated and he is not eligible to claim for regularization in view of above letters and his status as contract labour.

16. Now the question arises whether there existed employee and employer relationship between the claimant and Respondent. Petitioner has admitted the fact that he was doing the work as a contract labourer in the Respondent Department. Further, to prove the employment there has to be a strict evidence to show some nexus between the claimant and the Respondent. This can be any kind such as appointment letter, monthly payment slip, deduction of Provident Fund, payment of any dues, which can show that he was in the employment of the Respondent. **In the case of Automobile Association of Upper India vs. Presiding Officer Labour Court-II, 2006 LLR page 851 wherein the** Hon'ble Delhi High Court held, " *Engagement and appointment in service can be established directly by the existence and production of appointment letter, a written agreement or by circumstantial evidence of incidental and ancillary records which would be in the nature of attendance register, salary registers, leave records, deposit of Provident Fund contribution and employees state insurance contribution etc.. The same can be produced and proved by the workers or he can call upon and caused the same to be produced and proved by calling for witnesses who are required to produce and prove these records."*

17. But in the present case the claimant Petitioner has not produced any single piece of evidence showing that he was issued appointment letter by the Respondent. In fact, he has not disclosed date of actual joining of the employment as casual labour of the Respondent. Therefore, the contention of the Petitioner that he was casual labourer is not found to be proved by his evidence. Hence, he was not covered under Regularization Scheme rather he was contract labour as he has admitted in petition.

Thus, Points No.I & II are answered accordingly.

18. **Point No.III**: In view of the above discussion, it is clear that the Petitioner was not a casual labourer, rather had worked as contract labour for the period from 1994 to 1996. Therefore, Petitioner is not eligible to be regularized as a casual labour in the Respondent employment. The impugned order dated 8.6.2010 passed by Respondent needs no interference and petition is liable to be dismissed. In view of the finding given in Points No.I & II, the Petitioner is not entitled to any relief as prayed for regularization or reengagement. However, the Respondent has submitted that this Tribunal has disposed of LC No.8/2012 vide its order dated 29.2.2020 and granted relief of compensation to the Petitioner. In view of the foregone discussion, it is clear that the Petitioner was engaged as a casual labour for the period from 1994 to 1996 and number of days he worked has been verified by the Divisional Engineer as the Petitioner has filed the documentary evidence in support of his claim.

19. **In this regard Hon'ble Apex Court in the case of Hari Nandan Prasad Vs Employer I/R to management of FCI in Civil Appeal No.2417-2418 of 2014 dated 17.02.2014 held and laid down that :-**

"in the case of BSNL VS. Bhurumal 2013 (15) SCALE 131 which has taken note of the earlier case law relevant to the issue. Following passage from the said judgment would reflect the earlier decisions of this Court on the question of reinstatement: "The learned counsel for the appellant referred to two judgments wherein this Court granted compensation instead of reinstatement. In the case of BSNL Vs. Man Singh (2012) 1 SCC 558, this Court has held that when the termination is set aside because of violation of Section 25-F of the Industrial Disputes Act, it is not necessary that relief of reinstatement be also given as a matter of right.

However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice."

Therefore, in view of the above, Petitioner is liable for getting the compensation of Rs.50,000/.

Thus, Point No.III is answered accordingly.

ORDER

In view of the findings given above, it is hereby ordered: The petition of the Petitioner is allowed in part. The Respondents are directed to pay a sum of Rs.50000/- (Fifty thousand rupees) to the Petitioner towards compensation within four months from the receipt of this order, failing which the Petitioner is at liberty to take appropriate steps according to Law.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 27th day of April, 2023.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri Manepalli Krishnaiah	MW1: Nil

Documents marked for the Petitioner

Ex.W1:	Photostat copy of the Order dt 27-4-2010
Ex.W2:	Photostat copy of the Representation of WW1 dt.3.3.2010
Ex.W3:	Photostat copy of order passed in OA. No. 1229/2011
Ex.W4:	Photostat copy of order passed in OA. No. 100/2010
Ex.W5:	Photostat copy of order passed in CA. No. 101/2010
Ex.W6:	Photostat copy of proceeding of respondent dt 9-5-2007
Ex.W7:	Photostat copy of proceeding of Director, BSNL Railway Electrification Project Secunderabad dt. 12-9-2002
Ex.W8:	Photostat copy of list of candidates issued by Div. Engineer, Secunderabad dt. 11-9-2002
Ex.W9:	Photostat copy of proceeding Dt. 13-11-2007 providing information under RTI Act
Ex.W10:	Photostat copy of letter dt.21-11-2000 with regard to temporary status
Ex.W11:	Photostat copy of Days Book signed by authority
Ex.W12:	Photostat copy of Identity card of petitioner
Ex.W13:	Certificate from ALC(C), Hyderabad dated 9.6.2014

Documents marked for the Respondent

NIL

नई दिल्ली, 10 मई, 2023

का.आ. 786.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मुख्य महाप्रबंधक, दूरसंचार, बीएसएनएल, एबिड्स, हैदराबाद; सहायक महाप्रबंधक (प्रशासन), ओ/ओ सीजीएमटी, ए.पी. सर्किल, हैदराबाद, के प्रबंधतंत्र के संबद्ध नियोजकों और श्री पी. लक्ष्मीनारायण, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-हैदराबाद के पंचाट (संदर्भ संख्या 13/2017) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 10.05.2023 को प्राप्त हुआ था।

[सं. एल- 42025-07-2023-87-आईआर(डीयू)

डी. के. हिमांशु, अवर सचिव

New Delhi, the 10th May 2023

S.O. 786.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 13/2017) of the Central Government Industrial Tribunal cum Labour Court – Hyderabad as shown in the Annexure, in the Industrial dispute between the employers in relation to The Chief General Manager, Telecommunications, BSNL, Abids, Hyderabad ;The Assistant General Manager (Admn.),O/o CGMT, A.P. Circle, Hyderabad, and Shri P. Lakshminarayana, Worker, which was received along with soft copy of the award by the Central Government on 10.05.2023.

[No. L- 42025-07-2023-87-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL -CUM -LABOUR COURT AT HYDERABAD

Present: Sri IRFAN QAMAR Presiding Officer

Dated the day of 14th March, 2023

INDUSTRIAL DISPUTE No. 13/2017

Between:

Sri P. Lakshminarayana,
S/o Sri P. Narsaiah,
Nandanam – 506313
Warangal District. ….. Petitioner

AND

The Sub-Divisional Officer,
Telecom,
Mahaboobabad,
Warangal District-506 …. Respondent

Appearances:

For the Petitioner : M/s. A. Raghu Kumar & B. Pavan Kumar, Advocates
For the Respondent: Sri P. Prabhakar Reddy, Advocate

AWARD

This is a reference from Government of India, Ministry of Labour vide its order No. L-40012/204/95-IR(DU) dated 10.7.1997 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of Sub-Divisional Officer, Telecom, Mahaboobabad and their workman. The reference is,

SCHEDULE

"Whether the action of Sub-divisional officer, Telecom, Mahaboobabad, Warangal Distt. In terminating the services of Shri P. Lakshminarayana Ex.Casual mazdoor, w.e.f.1.10.88 is justified? If not, to what relief the workman concerned is entitled for?"

In the back drop of the matter the facts are being enumerated that the reference was sent by Government of India vide letter dated 10.7.1997 and initially it was received in the Industrial Tribunal –I, Hyderabad. After receipt of the reference, Industrial Tribunal-I at Hyderabad registered the reference as ID 38/1997. Notices were issued, claim statement was filed and there after Respondent filed his counter. Industrial Tribunal passed award dated 25.4.1998. Feeling aggrieved by the award passed by the Industrial Tribunal-I, at Hyderabad Respondent filed OA No.128/98 in ID 38/1997 on 2.12.1998 to review the same. But the said review petition was not entertained by the Tribunal vide order dated 25.4.1998 by holding that Tribunal has become functus officio on publication of award dated 13.6.1998 and the review application was rejected. Feeling aggrieved by the award dated 25.4.98, in ID 38/1997, and further order dated 2.12.98 in IA 128/98, Respondent approached the Hon'ble High Court in WP No.5215/99 explaining the factual position and details

of engagement of the workman. But Hon'ble High Court dismissed the WP 5215/99 vide order dated 26.7.2005 on the ground that Hon'ble High Court cannot go into the factual aspect of engagement of 240 days. Further Hon'ble High Court modified the award by granting back wags from 25.4.98 and denied the back wages and attendant benefits from 1.10.88 to 24.4.98. Against the said order dated 26.7.2005 passed in WP 5215/2005 Respondent filed Writ Appeal No.2211/2005 and Hon'ble High Court vide order dated 28.8.2014 remanded the matter for fresh adjudication after due notification of the industrial dispute and pass order on merits. While the present industrial dispute case was proceeding before Industrial Tribunal-I, Hyderabad and later on vide letter No.68/2017 dated 12.4.2017 transferred to this Tribunal on the point of jurisdiction and after receiving the industrial dispute it was numbered as ID 13/2017(Old ID No.38/1997).

2. **On being issued notices, Petitioner filed statement of claim wherein he has submitted the following brief facts**:

It is submitted that the Petitioner belongs to a Schedule Caste. The respondent-SDOT, Mahabubabad initially employed him as Casual Mazdoor w.e.f. 1.3.1986 to work in the working party of Shri M. Anantharamulu, Sub-Inspector Telegraphs, Mahabubabad. But when he found that the Petitioner was not registered in the Employment Exchange, the respondent (who was then incharge of the Sub-Division) advised the Petitioner to register his name in the Employment Exchange which he did on 23.3.86. It is further submitted that from the date of his initial employment on 1.3.86, the Petitioner was continuously employed for 552 days till the end of September, 1988, but thereafter he was retrenched from service w.e.f. l.10.88 on the plea of ban imposed by the former Director General, P&T, New Delhi on 30.3.85 prohibiting fresh recruitment and employment of Casual Mazdoors, but the order dated 4.5.88 in O.A. No. 529 in Sri Sunderlal Vs. Union of India the Principal Bench of the Hon'ble Central Administrative Tribunal declared the said DG's order dated 4.5.88 as no more valid in view of the judgement in Daily-Rated Casual Labour in P&T. Vs. Union of India and others (AIR 1987 SC 2342). It is submitted that the Petitioner's retrenchment on that ground is invalid and untenable. Moreover, since the Petitioner was employed for more than 240 days in each year during his employment, more particularly in .the year preceding the date of his termination, termination of his services is void ab initio besides violation of the legislative policy inbuilt in the ID Act. Further, the Petitioner submits that before his termination from service he was not given notice nor he was paid the notice period wages and he was also not paid any compensation as per the mandatory provisions of Sec. 25-F of the I.D. Act, 1947. Therefore, the Petitioner's termination is ab initio void and he is entitled to reinstatement with continuity service, back wages and all other benefits which are incidental consequential to his reinstatement. It is further submitted that being a SC candidate, the Petitioner is also entitled to be absorbed against a reserved post or point in the Telecom Department (Warangal Telecom District), vide letter No. 269-27/92-STN, dt. 3.6.92. It is submitted that the Petitioner is entitled to reinstatement in service with continuity of service and back wages and for all other consequential and incidental1 benefits such as regularization according to Petitioner's seniority among the Casual Mazdoors of Warangal Telecom District and pending regularization for grant of temporary status as per the DoT's order dt. 7.11.89 mentioned above, besides granting exemplary costs. Otherwise, the Petitioner will suffer irretrievable loss and injury.

3. The Respondent filed counter affidavit denying averments of the claim statement of the Petitioner, which is as under:

It is submitted that the averments and contentions raised by the Petitioner in the claim statement are denied as a whole and they are misconceived, baseless and incorrect. It is submitted that the petitioner has approached the Regional Labour Commissioner on 03.12.1993 by raising an industrial dispute alleging termination from 01.10.1988 and the said termination without notice is in violation of Sec 25 (F) of ID Act and claimed reinstatement with back wages. On the basis of the report of failure of the conciliation proceedings by the RLC(C), Hyderabad, the Central Government in the Ministry of Labour has referred the following dispute vide Order No. L-40012/204/95- IR(DU) dated 10.7.1997 for adjudication by the Hon'ble Tribunal. It is further submitted that the Petitioner filed a claim statement on 26.12.1997 by asserting that he worked for 240 days from 01.03.1986 to worked 30.09.1988 and as a whole for a total period of 552 days and the retrenchment from 01.10.1988 is without notice and as such is in violation of Sec.25 of ID Act 1947 and therefore entitled for reinstatement with back wages. The claimant has filed a notebook maintained by him without any letter of engagement and payment details. It is submitted that the Hon'ble Tribunal passed an award on 25.04.1998 directing reinstatement into service of the petitioner Sri. P. Laksminarayana with back wages and other benefits a casual labour without specifying any date while in the schedule of the reference dated 10.07.1997, mentioned 01.10.1995 as the date of retrenchment while the Petitioner mentioned the same as 01.10.1988. It is submitted that the respondents have filed IA No. 128 of 1998 in ID 38 of 97 on 02.12.1998 to review the same. The said review petition was not entertained by the Hon'ble Tribunal vide order dated 25.04.1998 by holding that the Hon'ble Tribunal has become functus officio on publication of the award on 13.06.1998 and the review application is misconceived and also on the ground of delay and as such the award has become final. It is

submitted that aggrieved with the said award dated 25.04.1998 in ID No. 38/1997 and the further order dated 02.12.1998 in IA No. 128/1998 in ID No. 38/1997 the respondents have approached the Hon'ble High Court in WP No. 5215 of 1999 explaining the factual position and the details of engagement as detailed below.

Months	Days	Months	Days	Months	Days
3/86	24	1/87	25	1/88	31
4/86	16	2/87	22	2/88	29
6/86	14	3/87	27	3/88	31
8/86	7	5/87	15	4/88	20
9/86	29	6/87	3	6/88	13
10/86	26	8/87	3	7/88	24
11/86	25	9/87	22	8/88	9
12/86	19	10/87	22	9/88	14
--	--	11/87	28	--	--
--	--	12/87	30	--	--
Total:	160		194		199

It is submitted that it was explained before the Hon'ble High Court that at all times the Petitioner was engaged in contingency for works of urgent nature and the same was intermittent and the same was permitted vide D.G. P&T, New Delhi Lr. No. 270-6/84-STN dated 22.06.1988 notwithstanding the ban of engagement of casual labour vide D.G. P&T, New Delhi, letter dated 30.03.1985. It was specifically brought out that the engagement is intermittent for 160 days in 1986, 194 days in 1987, and 199 days in 1988 and there is no engagement for 240 days in any year and engagement was on intermittent periods for specified works of urgent nature. It was asserted that the Petitioner is not a workman for the purpose of ID Act and he is not entitled for reinstatement and there is no question of termination and discharge of the workman as contemplated in Sec.25 (F) of the I.D.Act. It was brought to the notice of the Hon'ble Tribunal that the awards dated 02.05.1994 in IDs No. 54 of 199l and 55 of 1991 to the effect that the casual labour were engaged on intermittent works and they are not entitled for regularization and Sec.25(F) of the I.D. Act need not be complied with after disengagement and after completion of the intermittent works. It was also brought to the notice of the Hon'ble Tribunal that the decision of the Hon'ble Supreme Court in Delhi Development Horticulture Employment Union Vs. Delhi Administration (AIR 1992 SC 7890) to the effect that casual labour employed on temporary works are not entitled to claim regular absorption on the ground that such casual labour have put in works for 240 days. It is further submitted that the Hon'ble High Court dismissed the WP 5215 of 1999 vide Order dated 26.07.2005 on the ground that the Hon'ble High Court cannot go into the factual aspect of engagement for 240 days and taken note of the submission of the Petitioner that he worked for 279 days during October, 1987 and September, 1988 preceding the date of termination i.e., 01.10.1988 and no useful purpose would be served in remanding the matter and concluded that the Petitioner had put in 240 days of service and the oral termination is violation of Sec.25(F) of the I.D. Act and cannot be said to be illegal or arbitrary. Further the Hon'ble High Court held that the mention of 01.10.1995 while the termination was from 01.10.1988 is a clerical mistake and cannot be taken serious note while the same is a substantial question of law since the award and the reference are inconsistent. The Hon'ble High Court has modified the award by granting back wages from 25.04.1998 and denied the back wages and attendant benefits from 01.10.1988 to 24.04.1998. It is further submitted that the Division Bench of the Hon'ble High Court vide order dated 28.08.2014 remanded the matter for fresh adjudication after due notice and renumber the ID and pass orders on merits. It is submitted that the claim is untenable having regard to the decision of the Hon'ble High Court dated 02.07.1996 in WP No. 12885 of 1996 wherein the Hon'ble Court categorically mentioned that relief under Sec 25(F) of the I.D. Act is not available for intermittent engagement which worked out for 227 days and that the provisions of Sec. 2(O)(o) of I.D.Act are applicable and the case of the Petitioner therein falls under excluded category. The Hon'ble High Court agreed with the findings of the Hon'ble Tribunal dated 13.05.1994 in ID No. 69 of 1991. The Hon'ble Tribunal vide award dated 10.06.2013 in ID No. 69 of 1991 on remand, dismissed the claim petition and passed a nil award. It is submitted that the Hon'ble High Court has considered the question in WP No. 14858 & 14861 of 1994 that engagement in short spells whenever the availability of such works is of temporary nature, the non-issuing of notice under Sec. 25(F) of the I.D. Act or wages in view of such notice does not make the discharge of the workman from service for want of work as illegal. The Industrial Tribunal did not consider the distinction between the engagement of casual mazdoors for a regular work and engagement of casual mazdoors for a particular work of temporary nature and ordered reinstatement with all consequential benefits and held there is no illegality in the order of discharge passed there off by the respondent. Accordingly the awards of the Industrial Tribunal dated 27.09.1993 cannot be sustained. The same has application to the acts of the present case. In the light of the above, the claim of the Petitioner for reinstatement from 1.10.1998 with back wages is misconceived and deserves to be dismissed.

4. Petitioner filed chief examination affidavit in support of his claim reiterating the averments made in the claim petition. He marked photocopies of six documents i.e., Ex.W1 to W6 in support of his claim. During cross examination Petitioner admitted that the entries of Ex.W2 were made by him and paying officer has signed and also the number of days mentioned in Ex.W2 are not correct.

5. Respondent filed chief examination affidavit stating that Petitioner was engaged in contingencies for works of urgent nature and the same was intermittent. Petitioner raised an industrial dispute on 3.12.1993 after lapse of more than 5 years from the date of disengagement, with an allegation that the Respondent retrenched his services without following the provisions of Section 25F of I.D. Act, 1947. It is deposed by MW1 that the Petitioner was not appointed by following regular appointment process and he was engaged purely on temporary basis depending upon the availability of work. The allegation of the Petitioner is that the Respondent retrenched his services without following the provisions of Section 25-F of Industrial Disputes Act. It is submitted that the Petitioner never worked continuously for 240 days in any calendar Year, therefore, the question of following Section 25-F of the Industrial Disputes Act does not arise. He further stated that the Petitioner is not a Workman and there is no question of termination and discharge of the Workman as contemplated in Section 25 F of the I.D. Act. The Ex. W-2 filed by the Petitioner is not a genuine record and he never worked for the days mentioned in the Ex. W-2 document. He further stated that so far Respondent paid an amount of Rs.1,38,693/- towards half of back wages from October, 1988 to March,2000 and Rs. 1,43,065/ towards 17-B wages from 01-10-2001 to 31-08-2014, Rs. 923/- pm to the Petitioner in all totalling to Rs.2,81,758/- as per the directions of the Hon'ble High Court. He further stated that the there is a ban on appointment of casual and temporary employees by the Government of India vide letters No.270/6/84- STN dated 30/03/1985 and 22-06-1988. MW 1 has marked photocopies of two documents i.e., Ex.MI and Ex.M2 in support of his statement. During cross examination he stated that for every mazdoor Respondent issue muster roll every month and on that basis they will be paid wages and since Ex.W2 book was not issued and maintained by the Telecom Office, but maintained by the petitioner only and hence, it is not a genuine one. It is stated by him that the petitioner was not appointed by following regular appointment process, but was engaged purely on temporarily basis depending upon the availability of work. There was no particular procedure for appointment as casual labour. The muster rolls and other connected records of the years 1986 and 1987 showing the period of work of the petitioner are not available and as such the question of verification does not arise. Respondent has not filed existing rules of appointment.

6. Heard arguments of Learned Counsels for both the parties as well as perused written arguments.

7. Petitioner has submitted the written arguments wherein the Petitioner has stated that from the date of his initial employment on 1.3.1986, the Petitioner was continuously employed for 552 days till the end of September, 1988 on the plea of ban imposed by the former Director General, P & T, New Delhi on 30.3.1985 prohibiting fresh recruitment and employment of casual mazdoor. Since the DG's order dated 4.5.88, in OA No.529/88 in Shri Sunderlal and others Vs. Union of India and others held that no more valid in view of judgement in **Daily rated casual Labour in P & T.. Vs. Union of India and others (AIR 1987 SC 2342)**. Therefore, the Petitioner's retrenchment on that ground is invalid and untenable. It is submitted that Petitioner was worked for more than 240 days in each year during the employment, more particularly, the year preceding his date of termination which is 1.10.1988 and termination of his services is void ab-initio being in violation of the legislative policy inbuilt in the I.D. Act, 1947. It is also submitted that before termination from service he was not given notice nor was he paid the notice period wages and he was also not paid compensation as per mandatory provisions of Section 25-F of the I.D. Act, 1947. Therefore, Petitioner's termination is void ab-initio and he is entitled for reinstatement, continuity of service, back wages and other benefits such as grant of temporary status as per the DOT's order dated 7.11.1989 and regularizing according to Petitioner's seniority among the casual mazdoors of Warangal Telecom District.

8. On the other hand, Respondent's counsel submitted that the petition is not maintainable as the Petitioner was not appointed as regular employee of the Respondent Management and he was daily wages workman employed for specific period and specific project for the work or urgent nature and the same was intermittent and same was permitted vide lr. No.270-6/84-STN dated 22.6.1988 not withstanding the ban of engagement of casual labour vide letter dated 30.3.1985. It is also submitted that engagement of the Petitioner was entertained for 160 days in 1986, 194 days in 1987, and 199 days in 1988 and there is no engagement of 240 days in any year and engagement was on intermittent period for specific work of urgent nature. It is submitted that Petitioner is not a workman for the purpose of I.D. Act, 1947 and is not entitled for reinstatement and there is no question of termination and discharge of workman as contemplated in Sec.25F of the I.D. Act, 1947. Therefore, Respondent prayed for dismissal of the reference.

9. *Respondent filed certain citations in support of his argument. In* ***Delhi Development Horticulture Employment Union Vs. Delhi Administration (AIR 1992 SC 7890)*** *wherein the Apex Court held, causal labour employed on temporary works are not entitled to claim regular absorption on the ground that such casual labour have put in works for 240 days.*

10. *In* ***Sitaram and ors. V.s Moti Lal Nehru Farmers Training Institute, AIR 2008 SC 1955(1), Apex court held: "****Daily wages appointed by Charitable Trust – Appointment made to carry on certain work undertaken by Trust – Trust subsequently discontinuing that work – Granting relief of reinstatement – Not proper – Trust directed to pay compensation to workman."*

11. ***In Senior Superintendent, Telegraph (Traffic), Bhopal Vs. Santosh Kumar Seal and Ors. AIR 2010 SC page 2140,*** *it was held:*

"6. In last few years it has been consistently held by this Court that relief by way of reinstatement with back wages is not automatic even if termination of an employee is found to be illegal or is in contravention of the prescribed procedure and that monetary compensation in lieu of reinstatement, back wages in cases of such nature may be appropriate.

7 It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in the recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact-situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.

8. in view of the aforesaid legal position and the fact that he workmen were engaged as daily wagers about 25 years back and they worked hardly for 2 or 3 years, relief of reinstatement and back wages to them cannot be said to be justified and instead monetary compensation would subserve the ends of justice. In our considered view, the compensation of Rs.40,000/- to each of the workmen (Respondent Nos.1 to 4) shall meet the ends of justice. We order accordingly. Such payment shall be made within 6 weeks from today failing which the same shall carry interest at the rate of 9 per cent per annum."

12. *In the case of* ***2014 (6) ALD 618 (DB) wherein the Hon'ble High Court held: "****Reinstatement into service with back wages – grant of relief of, on retrenchment being found illegal –Not permissible, when Respondent s were only casual workers – Rs.1,60,000/- awarded as compensation to each of Respondents.****"*

13. *In another case,* ***Mohd Sadiq Ali Vs. Union of India and another 2015 (3) ALD 354(DB)*** *wherein the Hon'ble High Court held: "Appellants engaged for laying underground cables and construction of overhead alignment-and construction of overhead alignment-work was not for a specific period or of specific nature – It is only when work is described in specific terms that possibility to invoke S.2(oo) of Act would exist, on establishing that work so specified has been executed – reference to "underground cables' or 'overhead alignment' in general terms –Does not have effect of taking away rights of appellants that are conferred upon them under S.25F." It is further held that further there is not much work with Respondent No.1 to engage them- and as length of service rendered by them before retrenchment was hardly one year, in the interest of justice award passed by Tribunal modified to the extent that in lieu of relief of retrenchment and other attendant benefits, a sum of Rs.1,50,000 to each of Appellants shall be paid."*

14. *In the case of* ***Electronics Corporation of India Ltd., ECIL, Hyderabad Vs. K. Lakshminarayana and another, 2014(4) ALD 642 (DB)*** *Hon'ble High Court held: "It is not in dispute that the Appellant is a gigantic organization owned by the Government of India and it has got a comprehensive set of rules providing for appointment of employees of all the categories. It is only when an employee has been appointed as per the prescribed procedure New Delhi discontinued in contravention of Section 25-F of the Act, that the relief of reinstatement can be granted by the Tribunal. The Hon'ble Supreme Court in Himanshu Kumar Vidyarthi's case (supra), has obviously taken into account the fact that wherever the appointments in an organization are governed by a set of rules, it is only the appointments made, in accordance with such rules, that can be protected in law. In other words, if any person is engaged for any unforeseen or temporary or casual work, such person cannot be treated as part of workforce nor can he be extended the benefit of Section 25-F of the Act."*

15. **On the basis of pleadings of both the parties, following issues are emerging for determination**:-

1. Whether the action of the Sub-Divisional Officer, Telecom, Mahaboobabad, Warangal District in terminating the services of Sri P. Lakshminarayana, Ex.Casual mazdoor, w.e.f. 1.10.88, is justified?

2. If not, to what relief the workman concerned is entitled for?

16. Point No.I: The Petitioner submitted that respondent SDO (T) Mahboobabad initially employed the petitioner as casual mazdoor w.e.f from 1st March, 1986 to work in working party and he continuously employed them for 552 days till the end of September, 1988, but he was retrenched from service w.e.f 1st October, 1988 on the plea of ban imposed by the Former Director General P&T, New Delhi on 30th March, 1985 prohibiting fresh recruitment and employment of casual mazdoor. It is submitted that petitioner has been employed for more than 240 days in each year during his employment and more particularly in the year preceding the date of his termination i.e. 30th September, 1988. Petitioner submits that before his termination from service he was not given notice nor he was paid the notice period wages and he was also not paid any compensation as per the mandatory provision of Section 25-F of ID Act 1947. In view of the violation of the provision of the said Section 25-F, his termination is void ab initio and he is entitled to reinstatement with continuous service.

17. Respondent in his counter has refuted the allegation made by the petitioner and submitted that the petitioner has been engaged for intermittent period i.e. for 160 days in the year 1986, 194 days in the year 1987 and 199 days in the year 1988 and there was no engagement of Petitioner for 240 days in any year. Since his engagement was for an intermittent period for specific work of urgent nature therefore there's no question of termination or discharge of workman as contemplated in Section 25-F of the ID Act. It is also submitted that claim of the petitioner is untenable, having regard to the decision of Hon'ble High Court dated 2nd July, 1996, in writ petition no. 12885 of 1996 wherein Hon'ble Court categorically mentioned that relief under section 25-F of the ID act is not available for intermittent engagement of workman. There's no violation of compliance of Section 25-F and Petitioner is liable to be dismissed.

18. Before proceeding to discuss and consider the contentions raised by the parties, it would be relevant to discuss relevant decisions relating to the matter as decided by the Apex Court. *In **Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan and Anr. (2004) Apex Court held: "I**t was the case of the workman that he had worked for more than 240 days in the year concerned. This claim was denied by the appellant. It was for the claimant to lead evidence to show that he had worked for 240 days in the year preceding the date of his termination. He has filed an affidavit. It is statement which is in his favor and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that in fact the claimant had worked for 240 days in a year."* These aspects were highlighted in ***Range Forest Officer v. S.T. Hadimani (2002 (3) SCC 25. "*** *No proof of receipt of salary or wages for 240 days or order or record in that regard was produced. Mere non-production of the muster roll for a particular period was not sufficient for the Labour Court held that the workman had worked for 240 days as claimed." In **Municipal Corporation, Faridabad v. Siri Niwas (2004 (8) SCC 195),** held "the burden was on the workman to show that he was working for more than 240 days in the preceding one year prior to his alleged retrenchment." In **M.P. Electricity Board v. Hariram (2004 (8) SCC 246)** the position was again reiterated in paragraph 11 as follows: "The above burden having not been discharged and the Labour Court having held so, in our opinion, the Industrial Court and the High Court erred in basing an order of reinstatement solely on an adverse inference drawn erroneously." In the case of **Manager, RBI, Bangalore vs. S Mani (2005) SCC Page 100,** the 3 Judges Bench of the Apex Court held that "the initial burden of proof was on the workman to show that he had completed 240 days of service." In the case of **Mohan Lal vs. Management, BEL 1981 SCC P. 225,** Hon'ble Apex Court held, "Before a workman can claim retrenchment, not being in consonance of Section 25 of the ID act, he has to show that he has been in continuous service of not less than 1 year with the employer who had retrenched him from service."*

19. Now, in view of the above decisions by the Apex Court, we have to see whether the petitioner in the present matter has produced reliable evidence to prove his plea that he had worked for 240 days continuously with employment of Respondent during 12 months just preceding from date of termination i.e. 30th September, 1988. Petitioner examined himself as WW1 and in chief affidavit he has reiterated his version of claim statement. In cross examination witness WW1 states that he was initially appointed as casual labour in March, 1986 and no order of appointment was issued to him. The entries in Ex. W2 were made by him and paying officer has signed it. Further, he states that particulars of days mentioned in Ex. W2 are not correct. Further, he states that he has not filed any document except Ex. W2 to show that he has continuously employed for 552 days. Further, he denied the suggestions that it is not true that he never worked for a continuous period of 240 days in any calendar year.

20. On the other hand, respondent witness MW1 states that document Ex. W2 was not issued by the Telecom office but maintained by the petitioner himself, hence it is not a genuine document. He has denied the suggestions given by the petitioner counsel that the petitioner worked as casual labour in 1986 and 1987. The perusal of the Ex. W2 goes to show that it starts from the date 1.3.1986 and it is simply a notebook and admittedly entries therein were made by the petitioner himself. Although, it is also alleged by the petitioner that it has been signed by the respondent office, but he didn't disclose the name and designation of so called authorized person who has put his signature in the said notebook. Moreover, the entry of working days as made in the notebook has not been proved by the petitioner As WW1 admitted in cross examination that number of days mentioned in Ex.W2 are not correct. Thus, the said entries doesn't prove the fact that he had worked for 240 days in the just preceding calendar year from the date of termination**.** Perusal of entries in the note book itself reveals that he worked intermittently during the said period and not continuously.

21. ***Hon'ble Apex Court in the case of Mohan Lal vs Management BEL has held:*** *"Clause (2)(a) provides for a fiction to treat a workman in continuous service for a period of one year despite the fact that he has not rendered uninterrupted service for a period of one year but he has rendered period of 240 days during the period of 12 calendar service for months counting backwards and just preceding the relevant date being the date of retrenchment. In other words, in order to invoke the fiction enacted in clause (2)(a) it is necessary to determine first the relevant date, ie. the date of termination of service which is complained of as retrenchment. After that date is ascertained, move backward to a period of 12 months just preceding the date of retrenchment and then ascertain whether within the period of 12 months, the workman has rendered service for a period of 240 days. If these three facts are affirmatively answered in favor of the workman pursuant to the deeming fiction enacted in clause (2)(a) it will have to be assumed that the workman is in continuous service for a period of one year and he will satisfy the eligibility qualification enacted in Section 25-F."* Therefore, in view of the above, discussion and law laid down by the apex Court, Tribunal is of considered opinion that Petitioner failed to prove his averment that he has work for 240 days in a year continuously. Further, the petitioner was terminated on 1st October 1988, but he raised the industrial dispute in the year 1997, almost after a long gap of 9 years and no satisfactory explanation has been furnished by the workman for such delay in raising the dispute. In this long gap of delay it is not expected from for respondent management that he must keep the record of daily wages labor intact. Respondent witness MW1 has stated that due to non availability of the record it couldn't be produced. Apex Court have held that mere non-production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the tribunal to draw an adverse inference against the management. The Petitioner has also failed on this count.

22. On the other hand the Respondent witness MW1 has stated in cross examination that for every mazdoor they issue muster roll every month and on that basis they will pay the wages and since Ex.W2 book was not issued and maintained by the Telecom Office, but maintained by the Petitioner only, hence, he could say that it is not a genuine one. MW1 also states that the muster roll and other records after 1986-87 showing the work of Petitioner are not available. As such, the question of verification does not arise. MW1 has denied the suggestion that they have conveniently ignored the orders which show casual labour to be regularized. In the present matter Petitioner has not produced any proof or receipt of salary or wages and muster roll to prove that he worked in Respondent employment for 240 days. Even no co-worker was examined. The details of working days of the Petitioner as mentioned by the Respondent in his counter i.e., 160 days in the year 1986, 194 days in year 1987, and 199 days in the year 1988 has not been contradicted by the Petitioner. It is quite improbable that the workman who claimed to have worked with the Respondent for the period of three year would not possess any documentary evidence i.e., muster roll or salary receipt to prove nature of his engagement and the period of work he had undertaken with his employer. Therefore, the Tribunal is of the opinion that the workman has utterly failed to discharge his burden of proof that he was in employment for 240 days during the preceding 12 months of the date of termination of his service. The Central Government as a matter of policy have issued instruction to the Department vide OM No.49014/84-Estt(C) dated 7.5.1985 to discontinue engagement of casual labour and further clarified in OM F. No.19014/2/86-Estt(C) dated June, 1988 reiterating that it should be ensured that there is no more engagement of casual labour for attending the work of regular nature. Thus, there is no policy to engage casual labour in any manner.

23. In view of the above discussion, I am of the opinion that petitioner failed to prove his averment that he had worked 240 days in a calendar year, just preceding from the date of his termination in the respondent employment rather he had worked intermittently. Therefore, no question of violation of provision of Section 25-F ID Act would arise.

Thus, Point No.I is answered accordingly.

24. **Point No.II** : In view of the discussion in forgone paras and finding in the Point No. I, I am of the considered view that the Petitioner is not entitled to any relief and his petition is liable to be dismissed.

ORDER

Thus, the reference is answered: The action of management of Sub Divisional Officer, Telecom Mahboobabad, Warangal District in terminating the services of Sri P Lakshmi Narayana, Ex Casual Mazdoor w.e.f 1st October, 1988 is found justified. Petitioner is not entitled to any relief. Therefore, the petition of the petitioner is dismissed.

Award is passed accordingly. Transmit.

Dictate to Smt. P. Phani Gowri, Personal Assistant, transcribed by her and corrected by me on this the 14th day of March, 2023.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri P. Lakshmi Narayana	MW1: Sri R. Sethu Madhava Rao

Documents marked for the Petitioner

Ex.W1:	Photostat copy of employment registration card
Ex.W2:	Note book containing particulars of working days between 1.3.86 to 30.9.88
Ex.W3:	Photostat copy of representation dated 8.12.1993 to ACL
Ex.W4:	Minutes of conciliation proceedings dated 6.7.95
Ex.W5:	Carbon copy of failure report dated 14.11.1995 of the ACL
Ex.W6:	Photo copy of order dated 7.11.1989 of Telecommunications.

Documents marked for the Respondent

Ex.M1:	Photostat copy of Circular dated 30.3.1985 issued by Government of India.
Ex.M2:	Photostat copy of Circular dated 22.6.1988 issued by Government of India.

नई दिल्ली, 10 मई, 2023

का.आ. 787.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मुख्य महाप्रबंधक, दूरसंचार, बीएसएनएल, एबिड्स, हैदराबाद; सहायक महाप्रबंधक (प्रशासन), ओ/ओ सीजीएमटी, ए.पी. सर्किल, हैदराबाद, के प्रबंधतंत्र के संबद्ध नियोजकों और श्रीमती च. श्रीदेवी, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-हैदराबाद के पंचाट (संदर्भ सं. 07/2012) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 10.05.2023 को प्राप्त हुआ था।

[सं. एल- 42025-07-2023-89-आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 10th May, 2023

S.O. 787.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 07/2012) of the Central Government Industrial Tribunal cum Labour Court – Hyderabad as shown in the Annexure, in the Industrial dispute between the employers in relation to The Chief General Manager, Telecommunications, BSNL, Abids, Hyderabad ;The Assistant General Manager (Admn.),O/o CGMT, A.P. Circle, Hyderabad, and Smt. Ch. Shridevi, Worker, which was received along with soft copy of the award by the Central Government on 10.05.2023.

[No. L- 42025-07-2023-89-IR (DU]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present: - Sri IRFAN QAMAR, Presiding Officer

Dated the 7th day of March, 2023

INDUSTRIAL DISPUTE L.C.No. 7/2012

Between:

Smt. Ch. Sridevi,
W/o Venkateswar Rao,
R/o H.No.3-5-303/1/A,
Pillichinnakrishna Thota,
Khammam. ..….Petitioner

AND

1. The Chief General Manager,
Telecommunications, BSNL,
Abids, Hyderabad.

2. The Assistant General Manager (Admn.)
O/o CGMT, A.P. Circle,
Hyderabad – 1. ….Respondents

Appearances:

For the Petitioner : M/s. M.V. Hanumantha Rao, Advocates
For the Respondent: Sri S. Prabhakar Reddy, Advocate

AWARD

Smt. Ch. Sridevi, who worked as office clerk cum receptionist (who will be referred to as the workman) has filed this petition under Sec. 2A(2) of the Industrial Disputes Act, 1947 against the Respondents, Railway Electrification Project (REF), BSNL, Secunderabad seeking for declaring the proceeding No. TA/STB/20-2/REP/06-10/23 dated 27.4.2010 issued by the Respondent as illegal, arbitrary, discriminatory, violative of principles of natural justice and to set aside the same consequently directing the Respondents to regularize or re-engage the Petitioner into service duly granting all the consequential benefits and such other reliefs as this court may deems fit.

2. **The averments made in the petition in brief are as follows**:

It is submitted that the Petitioner has worked as office clerk cum receptionist in Railway Electrification Project (REF) Secunderabad to Nagpur from 1.1.1994 to 30.9.11996 for 1004 days along with others. The Petitioner submitted that thereafter she along with others continued on voucher payment basis for some time and thereafter on contract basis. Petitioner along with others have been requesting for regularization or to provide regular work still no action has been taken by the department, though they have worked for a considerable period. Further, petitioner came to know that by proceedings dt.21.11.2000 similarly situated 79 persons have been regularized by giving them "temporary status" by the respondent, in fact those persons are juniors to the petitioner and other similarly situated persons. Petitioner hails from poor family and have been pursuing the authorities since long time with a hope that the department would consider her claim in a positive manner. Petitioner submits that, as there was no action taken by the respondents she along with others approached Hon'ble Central Administrative Tribunal, Hyderabad Bench, at Hyderabad by filing OA. Nos. 100/10 and 101/10 and the Hon'ble Tribunal after hearing both the parties disposed of the OAs, on 10.2.2010 with specific directions "since the applicants in the OA also have similar claims as the applicants in the WP.No.12872/08, I consider it appropriate to dispose of this Original Application by giving a direction to the applicants to file individual representations to the respondents giving full details namely, their addresses, places at which they were engaged, the period for which they were engaged etc., within a period of 4 weeks and on receipt of such representations, the respondents shall examine their applications with reference to the records and the scheme that was in force and pass orders within a period of 3 months from the date of receipt of such representation." It is submitted that, as per the orders of the Hon'ble Tribunal the petitioner and others have submitted elaborate representations to the Respondent No.1 along with order passed by Hon'ble Tribunal and

also attendance book etc. on 3.3.2010 the Respondent No.1 instead of appreciating the circumstances and without proper verification of records and without providing opportunity of being heard, Respondent has issued the impugned letter dt.27.4.2010 stating,

" i) With reference to the representation, pursuant to the directions of the Hon'ble Tribunal dated 10.2.2010 in OA. No.100/10 it is informed that the same has been duly considered having regard to the policy and availability of records and it is regretted that it is not open to re-engage you as casual labours or grant of temporary status under the scheme dt.7.10.1989 which has exclusive application to casual labour who have engaged prior to 31.10.1985 up to 22.6.1988 and continued as such. The following have duly taken into consideration for the aforesaid decision. All the casual labors who were eligible as per letter dt.29.9.2000 of DOT were regularized as one time measure.

(ii) Records pertaining to Railway electrification Project are not available for due verification of information furnished by you as they were weeded out as per the retention schedule. The letter of appointment and payment thereof is requisite record to verify your engagement from 1.1.1994 to 30.9.1996 and the basis for the same while DOT, New Delhi letter No.270-6/84-STN dt.22.6.1988 imposed ban on engagement of casual labours including project circle.

(iii) The certification by the Divisional Engineer about such engagement is not acceptable in the absence of records as indicated above.

(iv) It is stated that you have been disengaged as casual labour and also thereafter continued with contractor and thus there is no employer-employee relationship at any point of time thereafter and as such there is no scope to re-engage you as casual labour and also in view of the complete ban as per DOT, New Delhi letter no.269-4/93 STN-II dt. 12.2.1999 and further affirmed vide letter no.269-4/93/STN Il dt.15.6.1999 and the said policy is continuing.

v) The violation of provisions of Sec.25F of ID Act, 1947 having questioned in the appropriate forum at any time and as such disengagement has become final for all purposes.

vi) This disposes of your representation and it is hereby clarified that no further correspondence will be entertained on this subject."

Petitioner submitted that the proceedings dt.27.4.2010 are ex.facie illegal, arbitrary, discriminatory and contrary to record and violative of principles of natural justice and violative of Art. 14 and 16 of Constitution of India. It is submitted when similarly situated persons were regularized the respondent ought to have extended the same benefit to the petitioner also. Further, the reasoning recorded by the respondent as mentioned in the clause-(i) of the impugned order stating that benefit of extension of temporary status under scheme dt.7.10.1989 is only for casual labours who have engaged prior to 31.10.1985 up to 22.6.1988 is not tenable and when the department had extended similar benefit to similarly situated persons and having extracted work from the petitioner during subsequent period, denial of said benefit amounts discrimination. The contention of the respondents as mentioned in clause-(ii), records pertaining to Railway Electrification Project are not available as have weeded out as per the retention schedule is also not tenable. It is submitted non-availability of the records in the department cannot be attributed to the petitioner and respondent ought to have accepted the records produced by the petitioner. It is submitted regarding para no (4) of the impugned order that when similarly situated persons were engaged and records shows the services rendered by the petitioner the contention that there is no relationship as employer and employee is also not tenable. Clause (5) of the order is not maintainable in respect of the claims of petitioner as she has been pursuing with the department to re-engage him in the respondent department in view of their past experience. The petitioner is having record and also the department had considered similarly situated persons as such the petitioner is entitled for relief. It is submitted that the impugned order is not only illegal but also contrary to earlier directions issued by the Hon'ble Central Administrative Tribunal as such as a last resort the petitioner is approaching this Hon'ble court. The petitioner, along with others approached Hon'ble Central Administrative Tribunal Hyderabad Bench at Hyderabad and filed OA. No. 1229/2010 and after hearing both the sides the Hon'ble Tribunal has directed the applicants therein to approach concerned Labour court under Industrial Dispute Act, 1947 and hence, this petition. It is submitted the petitioner and others have filed their concerned days book duly signed by the employer on every month ending, identity card, etc., the days book clearly postulates all the relevant information of the petitioner with regard to work i.e. MRPTS work, cable work, or alignment, store work, etc., and Petitioner was paid Rs.60/- per day. It is therefore prayed that this Hon'ble Tribunal may be pleased to i) Declare the impugned letter No.TA/STB/20-2/REP/06-10/23 dt.27.4.2010 issued by the respondent as illegal arbitrary, discriminatory and violative of principles of natural justice and consequently set aside the said letter.

3. **The Respondents filed counter denying the averments made in the petition, with the averments in brief which runs as follows**:

The Respondent submitted that the claim petition is misconceived and is barred by limitation. There is no engagement of casual labour in BSNL, after 1.10.2000 and the casual labour who have been engaged as such before the imposition of ban vide letter No.270/6/84-STN, New Delhi dated 30.3.1985 and letter No.270-6/84-STN dated 22.6.1988 for the project circles and the line dismantling in the Electrification project circles have been continued in BSNL as a matter of policy and the Petitioner having been engaged in the project after the imposition of ban vide letter dated 22.6.1988 is not covered by the policy thereof and it is not open for the Petitioner to assert for reengagement or regularization under the said policy. The claimant is confusing the Hon'ble Tribunal with regard to the letter No.TA/STB/20-2/REP/06-10/22 dated 27.4.2010 pursuant to the directions of the Hon'ble Central Administrative Tribunal dated 10.2.2010, in OA No.100/2010 filed in continuation of WP No.12872/2008 in the High Court seeking for the identical relief and the communication dated 27.4.2010 based on the directions dt.10.2.2010 in O.A.No.100/2010 to comply with a judicial order notwithstanding the fact that the said O.A.No.100/2010 is misconceived and not maintainable having regard to the definition of employee in Rule 3(8) of BSNL & CDA Rules, 2006 implemented as such from 10.1.2006 thereby leaving no scope to exercise any jurisdiction by the Hon'ble Tribunal and on 28.2.2011 in O.A.No.1229/2010. It is not open for the claimant to assail the same before this Hon'ble Court in any manner for any purpose. The Railway Electrification project for line dismantling is distinct and different and the said project is out side jurisdiction of the respondent thereby leaving no scope to reengage any casual labour engaged by the said projects organization after the imposition of the ban and disengaging thereafter and entrustment of the work to a contractor thereby leaving no scope for reengagement and regularization as per the settled law. The Petitioner is relying on the documents which do not form part of the record of the respondent without any letters of engagement and payment particulars while the maintenance of the records in not the administrative concern of the answering respondent and no records as such are maintained after the expiry of three years relating to muster roll as per the retention schedule. It is therefore prayed that this Hon'ble Tribunal may be pleased to dismiss the claim petition.

4. Petitioner filed chief examination affidavit and examined herself as WW1 reiterating the facts stated in claim petition stated that, she has worked as office clerk cum receptionist (casual labour) in Railway Electrification Project (REF) Secunderabad to Nagpur from 1.1.1994 to 30.9.19996 for 1004 days along with others. Thereafter, she, along with others continued on voucher payment basis for some time and thereafter on contract basis requesting for regularization and no action has been taken by the department, though they have worked for a considerable period. During cross examination, Petitioner stated that she has not received any appointment letter but she worked as clerk in the Respondent's office. She was working under one contractor Mr. Lakshman, from January, 1994 to 30.9.1996 and paid Rs.50/- per day by the contractor. She has also worked for 2 years. She is not in a position to recognize the persons who were regularized in service. She cannot say the name of the person who promised for her regularization.

5. Respondent did not adduce any evidence on their behalf. Both parties filed written arguments as well as submitted oral arguments.

6. Heard. Perused the pleadings of both the parties.

7. **The following points arise for consideration**:-

I. Whether the Petitioner is eligible to be regularized as temporary status with Respondent employment under the scheme Casual Labourers (Grant of Temporary Status and Regularization) Scheme 1989?

II. Whether order dated 8.6.2010 passed by Respondent on Petitioner's representation is just?

III. To what relief if any, the Petitioner is entitled?

Finding:

8. **Points No.I & II**: Before proceeding to determination on points, it would be relevant to narrate the facts in the back drop of the matter. As pleaded by Petitioner workwoman Smt. Ch. Sridevi, she has worked as mazdoor (casual labour) in Railway Electrification Project, Secunderabad to Nagpur from 1.1.1994 to 30.9.1996 for 1004 days along with others. The Petitioner along with others continued on voucher payment basis for some time and thereafter on contract basis. She along with others have been requesting for regularization and to provide the regular work. Still no action has been taken by the Department, though they have worked for a considerable period. It is also pleaded that Petitioner came to know that by proceedings dated 21.11.2000 similarly situated 79 persons have been regularized by giving them temporary status by the Respondents. Since no action was taken by the Respondents she along with others approached Hon'ble Central Administrative Tribunal, Hyderabad Bench at Hyderabad by filing OA No.100/10 and 101/10 and the Hon'ble

Tribunal after hearing both the parties disposed of the OAs, on 10.2.2010 with specific direction which reads as follows: "since the applicants in the OA also have similar claims as the applicants in the WP No.12872/08, I consider it appropriate to dispose of this OA by giving a direction to the applicants to file individual representations to the respondents giving full details namely, their addresses, places at which they were engaged, the period for which they were engaged etc., within a period of 4 weeks and on receipt of such representations, the respondents shall examine their applications with reference to the records and the scheme that was in force and pass orders within a period of 3 months from the date of receipt of such representation." The Petitioner in compliance of the above order moved representation dated 3.3.2010 to the Respondent authority and Respondent rejected the representation by passing impugned order dated 27.4.2010. Against this impugned order present industrial dispute petition has been filed by the workman before the Tribunal. It is also submitted that the Petitioner along with others have challenged impugned order dated 27.4.2010 rejecting the representation of Petitioner and filed OA No.1229/2010 and after hearing both the sides Hon'ble Tribunal has directed the applicant to approach the Labour Court under I.D. Act, 1947. The copy of the order dated 28.2.2011 passed in OA No.1229/2010, G. Pentaiah and others Vs. Union of India has been filed wherein Hon'ble Tribunal has observed as below:

> "8. Admittedly, the applicants were engaged between 1.1.1994 and 30.9.1996 and they do not come under the scope of the scheme. However, a direction was given by this Tribunal earlier to examine their cases since the applicants claimed that some juniors who were appointed subsequently had been regularized. I now find that the Respondents have rejected the claim on the ground that relevant records have been weeded out. the matter raised disputed questions of fact viz., whether the applicants were employed as casual labourers for more than 1000 days and whether they are eligible for temporary status, etc. In the absence of records, it is not possible for this Tribunal to adjudicate this matter.
>
> 9. I, therefore, dispose of this application with a direction to the applicants to approach the labour authorities under the Industrial Disptues Act, 1947, if they are so advised, with all the relevant material so that a decision on their eligibility for temporary status or otherwise can be taken by the Respondent authorities. The Learned Counsel for the applicants has no objection to such a direction being given."

Therefore, in view of the above direction of Hon'ble Central Administrative Tribunal, we proceed to decide to determine the question whether the applicant was engaged as casual mazdoor for more than 1000 days and they are eligible for temporary status.

9. In this regard, the Petitioner has pleaded that she has got engaged as mazdoor(casual labour) in Railway Electrification Project, Secunderabad to Nagpur form 1.1.1994 to 30.9.1996 for 1004 days along with others. It is also submitted that she along with others continued as such on voucher payment basis and later on contract basis.

10. On the other hand, the Respondent has filed counter stating therein that there is no engagement of casual labour in BSNL after 10.10.2000 and the casual labour who have been engaged as such before the imposition of ban vide letter No.270/6/84-STN, New Delhi dated 30.3.1985 and letter No.270-6/84-STN dated 22.6.1988 for the project circles and the line dismantling in the Electrification project circles have been continued in BSNL as a matter of policy and the Petitioner having been engaged in Railway Electrification Project after the imposition of ban in project circles vide letter dated 22.6.1988 is not covered by the policy thereof and it is not open for the Petitioner to assert for reengagement or regularization under the said policy. It is submitted that the Petitioner is not covered under the definition of employee with Rule 3 sub clause 8 of BSNL & CDA Rules, 2006. Therefore, it is not open for the claimant to assail the same in any manner for any purpose. It is also submitted that Railway Electrification Project for line dismantling is distinct and different and the said projects is out side jurisdiction of the answering Respondent thereby leaving no scope to reengage any casual labour engaged by the said projects organization after the imposition of the ban and disengaging thereafter and entrustment of the work to a contractor thereby leaving no scope for reengagement and regularization as per the settled law. It is clear from pleadings of the parties that the Petitioner had worked as a mazdoor in Railway Electrification Project of the Respondent on contract basis. The Petitioner has submitted the documents in support of his allegation which are: Ex.W1 is photocopy of order dated 27.4.2010 which the Respondent authority has rejected the representation of the Petitioner by assigning reasons therein. Ex.W2 is a copy of representation dated 3.3.2010. The last para of the representation reveals that Petitioner has prayed for relief from Respondent to provide her employment, whereas in petition she has sought relief of regularization in the Respondent employment. Document Ex.W3 and W4 are photocopies of the orders of Hon'ble Central Administrative Tribunal passed in OA 1229/2010 and 100/2010. Other document Ex.W5 is photocopy of order passed in OA No.101/2010 dated 10.2.2010. The documents Ex.W6 to W9 are photocopies of the proceedings which were supplied by the Respondent to the Petitioner which contains list of casual labour. Ex.W10 is

photocopy of letter regarding temporary status and Ex.W11 is the attendance sheets of the workwoman Petitioner which has been signed by Divisional Engineer, Telecom, Secunderabad which reveals that the Petitioner has worked as mazdoor from 1.1.1994 to 30.9.1996 in Railway Electrification Project.

11. **It would be relevant to reproduce the provision of Sec.2(oo)(bb) of I.D. Act, 1947 which provide that,**

"(oo) "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include:-

(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; "

12. **The Hon'ble Apex Court in the case of S.M. Nilajkar and ors. Vs. Telecom, District Manager has held:** "the termination of the service of workman engaged in a scheme or project amounts to retrenchment within the meaning of sub-clause (bb) subject to the following provision being satisfied:

i) That the workman was employed in a project or scheme of temporary duration;

ii) The employment was on contract and not as a daily wager simplicitor, which provided inter alia that the employment shall come to an end on the expiry of the scheme or project; and

iii) The employment came to an end simultaneously with the termination of the scheme or project and consistently with the terms of the contract.

iv) The workman ought to have been apprised or made aware of the above said terms by the employer at the commencement of employment."

13. Since the Petitioner has alleged that she has worked as mazdoor from 1.1.1994 to 30.9.1996 in the Railway Electrification Project as contract labour. It goes to show that Petitioner has worked in the Respondent employment on a project which is open for a limited time and after completion of the project the Petitioner cannot claim any employment or regularization in the service of the Respondent. As far as the contention of the Petitioner is concerned that she should be regularized as other casual workers regularized under the scheme, it is settled law that any contract workman has no right to seek regularization of employment from employer, since it is a matter of discretion of the employer. Even otherwise, if a fresh contract contemplated to secure employee appointment with higher qualification or seek a fresh job on contractual employment having more skills, the employer will always have an authority to decide what is best for improving its functioning and which can be depend on work requirements.

14. Petitioner contended that Respondent has mentioned that in the impugned order the record pertaining to Railway Electrification Project are not available for due verification of the information furnished by the Petitioner. As they have weeded out as per retention schedule. The letter of appointment and payment thereof is requisite record to verify the engagement from 1.1.1994 to 30.9.1996. It is the duty of the authority to protect official files and record, it would be worthy to mention here that Petitioner had worked as Mazdoor in Respondent project for the period 1994-1996 as contract labour and she raised present industrial dispute by filing the petition u/s 2A(2) of the I.D. Act, 1947 in June, 2012. Long span of time more than 15 years have elapsed. Respondent in his counter has stated that no record as such are maintained after the expiry of three years relating to the muster roll as per the retention schedule. Since there was gross latches of inordinate delay on the part of Petitioner in raising present industrial dispute. Respondent is not supposed to maintain record of contractual labour beyond retention schedule. Therefore, in the case of non-production of the record by the Respondent, no adverse inference can be drawn against her in this case.

15. Respondent submitted that there is no engagement of casual labour in BSNL after 1.10.2000 and the casual labour who have been engaged before the imposition of the ban vide letter No. 270/6/84-STN dated 30.3.1985 and letter No.270-6/84-STN dated 22.6.1988 for the project circles and the line dismantling in the Electrification project circles have been continued in BSNL as a matter of policy and the Petitioner having been engaged in Railway Electrification Project after the imposition of ban in project circles vide letter dated 22.6.1988 is not covered by the policy thereof and it is not open for the Petitioner to assert for reengagement or for regularization under the said policy. The Respondent has submitted the copy of letter No.270/6/84-STN dated 30.3.1985 wherein it is mentioned that the Telecom Department has directed to stop the recruitment or employment of casual labour of any kind, any type of work. Further, copy of letter No.270-6/84-STN dated 22.6.1988 which is regarding casual labour recruitment wherein it is mentioned (para 2) that, there shall be no recruitment of casual labour even for specific period and it was directed to Respondent Department to engage from neighbouring divisions, employed for the project or electrification work. Further, the copy of the letter of DG Telecom, New Delhi dated 7.11.1989 has been filed wherein it is mentioned that the casual labourers

could be engaged after 30.3.1985 in projects and Electrification Circles only for specific works and on completion of the work the casual labourers so engaged were required to be retrenched. It is also mentioned that as per the direction in letter dated 22.6.1988 fresh recruitment of casual labourers even for specific works for specific periods in Projects and Electrification Circles also should not be resorted to. Therefore, in view of the ban on engagement of casual labourers the claim of the Petitioner is not maintainable. Since the Petitioner was engaged through contractor in the Railway Electrification Project which was meant for a specific period and after completion of the project work his employment is terminated and she is not eligible to claim for regularization in view of above letters and her status as contract labour.

16. Now the question arises whether there existed employee and employer relationship between the claimant and Respondent. Petitioner has admitted the fact that she was doing the work as a contract labourer in the Respondent Department. Further, to prove the employment there has to be a strict evidence to show some nexus between the claimant and the Respondent. This can be any kind such as appointment letter, monthly payment slip, deduction of Provident Fund, payment of any dues, which can show that she was in the employment of the Respondent. **In the case of Automobile Association of Upper India vs. Presiding Officer Labour Court-II, 2006 LLR page 851 wherein the** Hon'ble Delhi High Court held, " Engagement and appointment in service can be established directly by the existence and production of appointment letter, a written agreement or by circumstantial evidence of incidental and ancillary records which would be in the nature of attendance register, salary registers, leave records, deposit of Provident Fund contribution and employees state insurance contribution etc.. The same can be produced and proved by the workers or he can call upon and caused the same to be produced and proved by calling for witnesses who are required to produce and prove these records."

17. But in the present case the claimant Petitioner has not produced any single piece of evidence showing that he was issued appointment letter by the Respondent. In fact, she has not disclosed date of actual joining of the employment as casual labour of the Respondent. Therefore, the contention of the Petitioner that she was casual labourer is not found to be proved by her evidence. Hence, she was not covered under Regularization Scheme rather she was contract labour as she has admitted in petition.

Thus, Points No.I & II are answered accordingly.

18. **Point No.III**: In view of the above discussion, it is clear that the Petitioner was not a casual labourer, rather had worked as contract labour for the period from 1994 to 1996. Therefore, Petitioner is not eligible to be regularized as a casual labour in the Respondent employment. The impugned order dated 8.6.2010 passed by Respondent needs no interference and petition is liable to be dismissed. In view of the finding given in Points No.I & II, the Petitioner is not entitled to any relief as prayed for regularization or reengagement. However, the Respondent has submitted that this Tribunal has disposed of LCID No.8/2012 vide its order dated 29.2.2020 and granted relief of compensation to the Petitioner. Therefore, in view of the above, Petitioner is liable for getting the compensation of Rs.50,000/.

Thus, Point No.III is answered accordingly.

ORDER

In view of the findings given above, it is hereby ordered: The petition of the Petitioner is allowed in part. The Respondents are directed to pay a sum of Rs.50000/- (Fifty thousand rupees) to the Petitioner towards compensation within four months from the receipt of this order, failing which the Petitioner is at liberty to take appropriate steps according to Law.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 7th day of March, 2023

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Smt. Ch. Sridevi	MW1: Nil

Documents marked for the Petitioner

Ex.W1: Photostat copy of the Order dt 27-4-2010

Ex.W2: Photostat copy of the Representation of WW1

Ex.W3: Photostat copy of order passed in OA. No. 1229/2011

Ex.W4: Photostat copy of order passed in OA. No. 100/2010

Ex.W5: Photostat copy of order passed in CA. No. 101/2010

Ex.W6: Photostat copy of proceeding of respondent dt 9-5-2007

Ex.W7: Photostat copy of proceeding of Director, BSNL Railway Electrification Project Secunderabad dt. 12-9-2002

Ex.W8: Photostat copy of list of candidates issued by Div. Engineer, Secunderabad dt. 11-9-2002

Ex.W9: Photostat copy of proceeding Dt. 13-11-2007 providing information under RTI Act

Ex.W10: Photostat copy of letter dt.21-11-2000 with regard to temporary status

Ex.W11: Photostat copy of Days Book signed by authority

Ex.W12: Photostat copy of Identity card of petitioner

Documents marked for the Respondent

NIL

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